REPORT
on the Free Movement of Workers
in Denmark in 2012-2013

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Introduction

**MOST IMPORTANT TRENDS, MAJOR ACHIEVEMENTS AND DEVELOPMENTS IN DENMARK**

*Enhanced efforts against illegal work and/or social dumping*

Following the report issued by the Committee for Counteracting Social Dumping in October 2012, the Government and the Red-Green Alliance agreed on the launching of additional initiatives for fighting social dumping in November 2012. Among other things, it will be examined by the Ministry of Employment whether imposing a requirement on ID cards with or without safety education on persons working at construction sites is desirable. Furthermore, a number of measures applicable to foreign service providers or workers have been introduced, such as:

- Requirements on more information provided by foreign service providers in the RUT-register;
- the possibility of giving public access to certain information about foreign service providers;
- authorising the Danish Working Environment Authority to issue administrative fines to foreign service providers not meeting the requirements;
- the taxation in Denmark under the rules on limited tax liability of hiring-out of labour when foreign workers with a foreign employer perform work that is an integrated part of the work of a Danish business; and
- the taxation in Denmark under the rules on limited tax liability of foreign workers’ income from work performed in Denmark for a foreign business when the workers stay in Denmark for one or more periods of a total of 183 days within a 12 months’ period.

Also, in 2013 Directive 2008/104/EC on temporary agency work was implemented in Danish legislation.

*Equal treatment: Assistance provided to EU job seekers by municipal job centres is reported to raise issues on unequal treatment in access to employment and incompatibility with Article 25*

EU citizens are reported not to be provided with assistance from the municipal job centres in practice; other than being provided with a post card enumerating web addresses. However, the extent of the application of this procedure is not known. In so far as job seeking EU citizens are not offered assistance by employment agencies corresponding to that offered to Danish nationals, this raises issues on unequal treatment in access to employment.

Furthermore, in practice it appears that some job centres require from the EU citizens to be issued with a CPR and hence recorded in the Civil Registration System before being entitled to courses, internships, employment with salary subsidy etc. which is not in accordance with neither Danish legislation, nor Directive 2004/38/EC Article 25 and raises issues on unequal treatment in access to employment. The extent of this practice is, however, not known.

In addition, job seeking EU citizens are reported to encounter great difficulties in navigating in the Danish society, in terms of access to the labour market and health benefits with regard to i.a. being recorded in the Civil Registration System, issued with a National Health Card, getting bank accounts etc.
**DENMARK**

*Equal treatment: Language requirements - broad interpretation applied by the Board of Equal Treatment*

In 2012 the Board of Equal Treatment interpreted the personal scope of the *Act on Prohibition against Discrimination on the Labour Market* in a broad manner in light of Directives 2000/43/EC and 2000/78/EC, resulting in the prohibition of discrimination as laid down in the Act to encompass *all relevant rules and conditions relevant for access to vocational employment*. In one specific case, the Board found a writer’s application for a work scholarship submitted to a foundation having the responsibility of awarding public means for the purpose of promoting Danish creative art to be comprised by the scope of the Act. Consequently, the Act encompassed language requirements applied with regard to work scholarships for artists.

*Study grants: The reopening of cases and change of practice - follow-up on the Ombudsman’s investigation and recent practice from the CJEU*

In 2013, 3 major developments occurred with regard to study grants awarded to EU citizens:

1) In February 2013, the Danish Agency for Higher Education and Educational Support informed of the fact that previous cases resulting in refusal of study grants on grounds of the EU citizen not having *consecutive registered stay* in Denmark, or on grounds of a spouse or registered partner *not being a spouse of an EU citizen being a worker or self-employed in Denmark* may be reopened.

2) In June 2013, the Danish Agency for Higher Education and Educational Support informed of the fact that cases resulting in refusal of study grants to EU citizens engaged in *real and genuine employment* of a minimum of 10-12 weekly working hours or being self-employed may be reopened. Furthermore, the applications on study grants suspended since January 2012 during the CJEU’s processing of the *L.N. case* (C-46/12) will now be processed by the Agency.

   In addition, as a consequence of the CJEU ruling in the *L.N. case* (C-46/12), an administration being provided with input from the eIncome registry and automatically and regularly controlling whether the EU/EEA citizens concerned retain their status of workers has been established; raising issues on incompatibility with Article 14 (2) of Directive 2004/38/EC. For persons whose income does not appear from the eIncome registry, a separate control procedure has been established. The control implies that the income must be of an extent that the student as a rule is employed for a minimum of 10-12 weekly hours.

3) In September 2013, the Danish government informed the Danish Parliament’s European Committee that as it is the assessment of the Danish government that the 2-out-of-the-past-10-years’ residence criterion for study grants for study programmes abroad cannot stand alone following the CJEU judgments in *Commission v. Kingdom of the Netherlands* (C-542/09), *Giersch* (C-20/12) and joint cases *Prinz and Seeberger* (C-523/11 and C-585/11). Accordingly, the government plans to introduce a bill during the next parliamentary session, laying down additional affiliation criteria, such as family members, school, work and financial ties; supplementing the 2 years’ residence criterion - and based on the CJEU’s suggestions to the Member States in the abovementioned judgments. Moreover, cases resulting in refusal of study grants due to the 2 years’ residence criterion may be reopened and dealt with according to the new affiliation criteria.
Young workers: Social assistance reform - education order etc.

Various initiatives directed at young unemployed persons have been launched through recent years in Denmark, and in June 2013 2 Bills providing for a social assistance reform were adopted.

Some of the main elements of the reform are:

- Young persons below 30 years of age without an education are granted educational assistance of a level similar to that of study grants, as opposed to being granted social assistance;
- all young persons without an education are provided with an education order. For young persons who are able to commence an education, the education order means that they must commence an education as soon as possible. For young persons who do not have the qualifications for commencing an education, the education order means that they must be available to efforts directed towards education; and
- citizens above 30 years of age and young persons with an education who can work are met with requirements on intensive job seeking during the first 3 months. After this, they are met with requirements on earning one’s social security in so-called ‘jobs of use’ (nyttejob).

Residence/employment requirement for receiving child benefit allowance and child benefits is abolished

Following the Commission’s enquiry to the Danish Government in April 2013 under the EU Pilot Project Case No. 4873/13/EMPL about the application of the accumulation principle in relation to child benefits etc., the Danish Government will institute an amendment of practice with regard to persons encompassed by EU law and the introduction of a Bill in autumn 2013 with the purpose of ensuring full compliance of the Danish rules with EU law. Furthermore, with the purpose of the reopening of cases, under the circumstances the Danish authorities will identify cases within which the previous application of the accumulation principle resulted in persons being entitled to the benefits concerned not having been granted the benefits. Also, information on the possibility of the reopening of cases will be provided publically.

Enforcement of EU free movement law

The Ombudsman appears to play an increasingly vital role in enforcement of EU law in Denmark by i.a. the launching of investigations of his own initiative; lately within the area of study grants, resulting in the reopening of certain cases by the educational authorities.

Also, the Board of Equal Treatment plays a role in ensuring the enforcement of legislation on equal treatment, including EU equal treatment law. However, with regard to EU free movement law, the Board apparently does not consider the EU rules on free movement of workers to be encompassed by the competence of the Board, which gives rise to concern.

Furthermore, a number of organisations offer support to homeless and/or job seeking EU citizens, which appears to be based on the fact that many migrants find it extremely difficult to navigate in the Danish society in terms of access to the labour market and health benefits.
Chapter I
The Worker: Entry, Residence, Departure and Remedies

1. TRANSPOSITION OF PROVISIONS SPECIFIC FOR WORKERS

Introduction

_Udlændingeloven_ (‘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) emphasising 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 to set out more detailed provisions on the implementation of the EU rules on free movement, cf. _Aliens Act_ Section 6. This has resulted in _EU-opholdsbekendtgørelsen_ (‘EU Residence Order’)\(^2\) which is the central piece of legislation concerning free movement, as it implements Directive 2004/38/EC.

Compared to last year’s report, no amendments have been made pertaining to the formal transposition of the specific provisions of Directive 2004/38/EC. However, information procured on practice suggests that the transposition of certain specific provisions in practice is problematic; see more below.

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

Legislation

_Aliens Act_ Section 2 (1) lays down the basic rule on the right to enter and reside for up to 3 months, which applies to EU citizens as well as members of their families, cf. Section 2 (2). As for EU citizens being workers or self-employed, this rule is modified by the _EU Residence Order_ Section 3 (1-3); see below. As for EU citizens being job seekers, the rule is modified by the _EU Residence Order_ Section 3 (4); see below Section 2.

_EU Residence Order_ Section 3 (1), stipulates that an EU citizen has a right to reside in Denmark for more than the 3 months stipulated in _Aliens Act_ Section 2 (1) when the person has taken up employment in Denmark or is self-employed, including is a service provider, which appears to be in accordance with Article 7 (1a).

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

Legislation

_EU Residence Order_ Section 3 (2) stipulates that an EU citizen who was previously comprised by Section 3 (1), but is no longer working, retains his/her status as a worker or self-employed person, provided that the EU citizen

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1 Consolidation Act No. 863 of 25 June 2013.
2 Executive Order No. 474 of 12 May 2011.
- is temporarily unable to work as a result of sickness or accident, cf. Section 3 (2) (i), which appears to be in accordance with Article 7 (3a);
- is involuntarily unemployed upon paid occupation or self-employment for more than 1 year, which is duly recorded, and has registered with the job centre as job seeking, cf. Section 3 (2) (ii), which appears to be in accordance with Article 7 (3b);
- is involuntarily unemployed upon the expiration of a fixed-term employment contract of less than 1 year’s duration, which is duly recorded, and has registered with the job centre as job seeking, cf. Section 3 (2) (iii). This group of EU citizens retain the status as an employee or self-employed person for 6 months, cf. Section 3 (3), which appears to be in accordance with Article 7 (3c);
- has involuntarily become unemployed or lost his/her position as a self-employed during the first 12 months, which is duly recorded, and has registered with the job centre as job seeking, cf. Section 3 (2) (iv). This group of EU citizens retain the status as an employee or self-employed person for 6 months, cf. Section 3 (3), which appears to be in accordance with Article 7 (3c); or
- embarks on vocational training related to the person’s previous employment or is involuntarily unemployed and embarks on any form of vocational training, cf. Section 3 (2) (v), which appears to be in accordance with Article 7 (3d).

**Article 8 (3): Administrative formalities for EU citizens**

**Legislation**

**EU Residence Order** Section 22 stipulates that the issuance of a registration certificate to an EU citizen comprised by Section 3 (worker, self-employed or service provider) may be conditioned by the presentation of a valid identity card or passport and either proof of self-employment in Denmark or a letter of appointment or a confirmation from his/her employer proving that he/she has paid employment in Denmark, which appears to be in accordance with Article 8 (3).

**Practice**

In practice and as described below Chapter IV.2.2, in situations of i.a. temporary employment without a fixed number of working hours, some Regional State Administrations are reported to require EU citizens to present 3 months’ pay slips before issuing the registration certificate. Furthermore, in some instances some Regional State Administrations appear to require the worker, who has worked in Denmark for 3 months, to present a declaration from the employer stating that the EU worker will be employed for more than an additional 3 months, which does not appear to be in accordance with Article 8 (3).³

Furthermore, as described below Chapter VI.5, following the ruling in the **L.N. case** (C-46/12), in order for students to be regarded a worker (or self-employed) with genuine and effective employment, the EU citizen as a rule must have had a minimum of 10-12 weekly working hours. This must be documented by ‘[…] for example an employment contract or pay slips for the whole period […]’ which must be submitted along with the application

form. While acknowledging the fact that pay slips are mentioned merely as an example of documentation by the Agency for Higher Education and Educational Support, and the fact that the documentation is not required for the purpose of issuing registration certificates, it appears rather unfortunate for the Agency to mention documents that cannot be required from workers as proof of their status in connection with the issuance of registration certificates without violating Directive 2004/38/EC Article 8 (3), as this may leave EU citizens with the impression that pay slips are in fact required as proof of their status.

**Article 14 (4a-b): Retention of the right to reside**

**Legislation**

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

**Practice**

Yet, in practice there appear to be issues pertaining to unregistered EU citizens seeking public financed offers available to i.a. homeless persons, raising issues on incompatibility with Article 14 (3)-(4) as those EU citizens’ stay is reported in practice to be considered illegal by the social authorities due to the fact that the EU citizens seek the assistance concerned; see more below Section 3. However, with regard to the immigration authorities’ assessment, and hence the possible implications in terms of residence rights (and also whether the EU citizens concerned in practice fall under the Immigration Service’s or the police’s maintenance obligation), this follows from Notat om adgangen til ud- og afvisning af EU-/EØS-statsborgere på baggrund af subsistensløshed eller af hensynet til den offentlige orden (‘Memorandum on the Access to Expulsion and Refusal of EU/EEA Citizens on Grounds of Destitution or Considerations on Public Order’); see further below.

In 2009 the Copenhagen Municipality was informed by the then Integration Ministry that EU citizens may be refused entry into Denmark by the police for up to 3 months after entry, provided the EU citizens cannot supply for themselves and request for assistance. This, notwithstanding the fact that it is stipulated explicitly in the Aliens Act that aliens encompassed by EU free movement law cannot be refused on grounds of the alien’s means being insufficient to support him/her.

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5 Cf. also the principles of Article 25.
6 **Aliens Act** Sections 42a ff and 43; aliens staying illegally in Denmark and asylum seekers fall under the Immigration Service’s or the police’s maintenance obligation.
7 The Ministry of Refugee, Immigration and Integration Affairs, 30 June 2011.
9 Section 28 (1) (5), cf. Section 28 (5); the latter stipulating that aliens comprised by the EU free movement rules may only be refused entry under Section 28 (1) (5) if the authorities must defray the expenses of the alien leaving Denmark.
However, following the 4 principled rulings passed on 31 March 2011 by the Supreme Court, determining the threshold for administrative expulsion of EU citizens, in June 2011 the then Integration Ministry issued the abovementioned Memorandum on the Access to Expulsion and Refusal of EU/EEA Citizens on Grounds of Destitution or Considerations on Public Order (see DK-Report 2010-2011 Chapter I.4). Among other things the Memorandum stipulates that an EU/EEA citizen being a destitute may not be refused entry under Directive 2004/38/EC, regardless of the fact that the authorities must defray the expenses of the alien leaving Denmark, if this is the only application on public assistance. Furthermore, refusal may not be made, notwithstanding the fact that the person concerned is a destitute, if the person did not apply for public assistance. In addition, refusal must be based on a concrete assessment of whether the reception of public assistance may be regarded as an unreasonable burden to the State. It is a prerequisite for refusal that more than one single reception of public assistance exists as a minimum. As a rule, the immigration authorities’ assessment of whether the alien concerned constitutes an unreasonable burden must follow the assessment of the social authorities. However, the fact that a municipality granted an alien one single assistance will not in itself be decisive for whether there is a basis for refusal. It is the immigration authorities’ assessment of whether the receipt of assistance constitutes an unreasonable burden.

Also, if the EU/EEA citizen has stayed in Denmark for more than 3 months, claims to be a tourist but does not have resources for his/her maintenance and must be considered a destitute, expulsion may be made pursuant to Aliens Act Section 25b, as the stay is no longer considered covered by the right to free movement pursuant to Directive 2004/38/EC and thus is illegal. Modifications apply to job seekers.10

There is currently no updated information available about Copenhagen’s Municipality implementation of the Ministry’s Memorandum, which takes precedence over the Municipality’s Memorandum. Nor is there any information available on practice regarding the immigration authorities’ assessment of whether the seeking of offers available to i.a. homeless persons constitutes an unreasonable burden. In so far as EU citizens, possibly being job seekers, workers or self-employed, are in fact being subjected to refusal (or expulsion) as a result of seeking offers available to i.a. homeless aliens per se, this raises issues on incompatibility with Article 14 (3)-(4), cf. Article 14 (1).

**Article 17: Right of permanent residence for persons who are no longer working**

**Legislation**

*EU Residence Order* Section 20 stipulates 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.11

*EU Residence Order* Section 7 concerns retired persons, etc. and corresponds to Article 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

10 Paras. 1.3 and 1.6.
11 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/EC Article 16.
Lov om social pension (‘Act on Social Pension’) 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 12 months and has resided in Denmark continuously for at least the previous 3 years. Hence, Section 20, cf. Section 7 (1) (i), appears to be in accordance with Article 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 2 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 20, cf. Section 7 (1) (ii), appears to be in accordance with Article 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 3 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 20, cf. Section 7 (1) (iii), cf. Section 7 (3), appears to be in accordance with Article 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 20, cf. Section 7 (2), appears to be in accordance with Article 17 (1) (c) third part.

- Section 7 (4) 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 Article 17 (2). However, Section 2 (2) states that a registered partner is treated as the equivalent of a spouse. 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. Hence, Section 20, cf. Sections 7 (4) and 2 (2), appears to be in accordance with Article 17 (2), cf. Article 3 (2) (b).

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

- Section 12 (1) concerns family members of an EU citizen falling within Section 7 (and having a right of permanent residence, cf. Section 20; see above) who accompany or join the EU citizen who has established real and actual stay in Denmark.

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12 Consolidation Act No. 390 of 19 April 2013.
13 Section 16 (2) makes it a condition that the principal person undertakes to support the cohabitant.
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.

Section 20, cf. Section 12 (2), appears to be in accordance with Article 17 (3), cf. Article 14 (2), Article 7 (1) (b), cf. Article 7 (2), cf. Article 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 to Article 17 (4).

- Section 14 (3) concerns family members’ – being EU citizens or third country nationals - right to permanents residence, cf. Section 20, when the family member has a right of residence under Sections 8 (1) or 9-11, when the principal fell within Section 3 (1) and when
  - the principal person had resided in Denmark for a continuous period of at least 2 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 Article 17 (4).

**Article 24 (2): Equal treatment**

**Legislation**

Article 24 (2) is not transposed in a single legal document or provision; rather various legislation govern the relevant areas such as social assistance and study grants. Also, general legislation prohibiting discrimination on various grounds is of relevance; see more below Chapter IV.

As described below Chapter IV.2.2, first-time job seeking EU citizens are not entitled to cash benefits under *Lov om aktiv socialpolitik* (‘Act on Active Social Policy’)16, apart from costs related to return to their home country. EU citizens and their family members with residence rights under EU law, on the other hand, are entitled to such benefits on equal terms with Danish citizens.17

Whereas these rules appear to be in accordance with Articles 14 and 27 of Directive 2004/38/EC, the compatibility of the general exclusion from cash benefits under the *Act on Active Social Policy* with Article 24 (2) may in certain instances be questioned against the background of recent CJEU case law, see Chapter IV.2.2 below.

14 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.
15 An EU national who is a worker, self-employed person, including a service provider.
16 Consolidation Act No. 190 of 24 February 2012, Section 12a.
17 Consolidation Act No. 190 of 24 February 2012, Section 3 (2).
In practice there appear to be serious issues pertaining to unregistered EU citizens seeking offers available to homeless persons, as they are unable to access certain public financed shelters and care homes, and as their legal status does not appear to be examined in a proper manner; see below Section 3.

With regard to job seekers specifically, it appears that in practice some job centres require job seeking EU citizens to be issued with a CPR and hence recorded in the Civil Registration System before being entitled to courses, internships, employment with salary subsidy etc. Also, there appear to be issues with the assistance provided to job seeking EU citizens by municipal job centres; see below Chapter III.1.1.

Further, as described below Chapter VI.5 about study grants, residence requirements are imposed as a prerequisite for receiving study grants for study programmes abroad.

In conclusion there appear to be issues on unequal treatment with regard to workers, self-employed persons, persons who retain such status and members of their families.

2. SITUATION OF JOB SEEKERS

For detailed information on the situation of job seekers, please see the Analytical Note on Job Seekers of June 2012, Denmark, and below Chapters III.1.1 and IV.2.2.

As mentioned in previous reports, the Danish transposition of Article 14 (4b) was clarified in the EU Residence Order Section 3 (4) in 2011. Consequently, whilst the general right of residence for up to 3 months appears from the Aliens Act as described above, the right of residence for job seekers appears from the EU Residence Order.

Accordingly, pursuant to EU Residence Order Section 3 (4) EU citizens seeking job have a right to residence in Denmark for up to 6 months. According to EU Residence Order Section 21 (1), 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 exceed 3 months. EU citizens with a right of residence pursuant to Section 3 (4), i.e. job seekers, shall not, however, apply for a registration certificate although the stay exceeds 3 months.

Thus, if seeking job, EU citizens have a right to residence in Denmark for up to 6 months without applying for a registration certificate. Furthermore, pursuant to EU Residence Order Section 3 (4), after 6 months of entry, an EU citizen being a job seeker is entitled to stay in Denmark provided he/she can substantiate that he/she continues to seek job and has actual chances to obtain employment.

Within this period of residence, the EU citizen has to supply for him/herself and may only be afforded social cash benefits for the return journey. Hence, an EU citizen who is a first-time job seeker does not have normal access to social assistance. The reasoning be-

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18 Bill No. L 167/2010-11, general remarks para. 9.3, item 11 and specific remarks para. 1.2.
19 Cf. also e-mail of 10 May 2012 from an official within the Ministry of Justice.
20 Cf. Vejledning til § 12a i lov om aktiv socialpolitik m.v., ('Guidance to Section 12a in the Act on Active Social Policy etc.'), Guidance No. 33 of 4 May 2004, para. 1.1, note 1 and Bill No. L 167/2010-11, general remarks para. 9.3, item 11 and specific remarks para. 1.2. Cf. also e-mail of 10 May 2012 from an official within the Ministry of Justice.
21 See more below Chapter IV.2.2.
hind this is the view that social assistance is not support offered specifically for job seeking. However, the EU citizen may enter an unemployment fund.

3. **OTHER ISSUES OF CONCERN**

**Homeless EU citizens**

In 2012, the organisation *Project UDENFOR* published a report according to which the vast majority of at least 500 homeless migrants in Copenhagen are EU citizens. Furthermore, 4 out of 5 are migrant workers, whose biggest problems are poverty, unemployment and homelessness.

In October 2012, the relief organisation *Kirkens Korshær* issued a project description of its new initiative; the establishment of a counselling offer for homeless migrants - *Kompasset*. The purpose of *Kompasset* is to offer legal and social counselling and support to the increasing number of homeless migrants in Copenhagen, and thereby to reduce their downfall. This is based on the experience of *Kirkens Korshær*, apparently proving that many migrants find it extremely difficult to navigate in the Danish society, namely in terms of access to the labour market and health benefits. The target group of *Kompasset* is homeless migrants who are not registered in Denmark in terms of Civil Registration System (CPR) or alien’s number and who hence do not have access to assistance from the public authorities. *Kompasset* further offers independent guidance for job seeking migrants specifically by i.a. a guidance on the Danish registration system and a letter of information to employers. In October 2012, the target group was comprised mainly by EU/EEA citizens, namely Eastern Europeans. Since January 2013, *Kompasset* recorded more than 400 requests for assistance; the majority apparently from job seeking EU citizens; see more below Chapters III.1.1 and IV.2.2.

Further, other organisations, such as *Project UDENFOR* and *Grace, Blå Kors* offer assistance to homeless - and/or job seeking - migrants; see more below Chapter VIII.4 on the organisations.

22 Cf. Guidance to Section 12a in the Act on Active Social Policy etc., Guidance No. 33 of 4 May 2004, para. 1.1, and Vejledning om EU/EØS-borgeres adgang til kontanthjælp og starthjælp, (‘Guidance on EU/EEA Citizen’s Access to Social Security and Starting Assistance’), Guidance No. 19 of 4 April 2008, paras. 2.2.3 and 3.2.2.B.

23 Cf. Lov om arbejdsløshedsforsikring m.v. (‘Act on Unemployment Insurance etc.’), Consolidation Act No. 642 of 22 June 2012, and Bekendtgørelse om arbejdsløshedsforsikring ved arbejde mv. inden for EØS og i det øvrige udland, (‘Executive Order on Unemployment Insurance upon work etc. within the EEA and other foreign countries’), Executive Order No. 490 of 30 May 2012.


26 Official website http://www.kirkenskorshaer.dk/sider/kompasset. See more below Chapter VIII.4 on this organisation.

27 Cf. e-mails of 7 and 19 June 2013 from an employee within *Kompasset*.

28 Official website http://www.blaakors.dk. See more below Chapter VIII.4 on this organization.
The Copenhagen Municipality and the police clearing the People’s Park

On 17 October 2012, which, apart from being the UN’s International Day for the Eradication of Poverty, is the National Homeless Day in Denmark, the Copenhagen Municipality together with the Copenhagen police cleared Folkets Park (‘the People’s Park’) in Copenhagen for what appears to be more than 50 - mostly foreign - homeless persons’ belongings. According to information provided in the media, the homeless persons hid their belongings in the park, among other ways by hanging bags in the trees. The belongings of the homeless persons were apparently not regarded as lost property but rather as worthless rubbish and hence transported in a truck directly to a garbage incinerator. Among other things, the passports, money, airline tickets, clothes, sleeping bags and mattresses of the homeless persons appear to have been burned, leaving for instance a Spanish homeless job seeker without the ID required for job interviews. This resulted in i.a. the manager of the cafe for socially exposed persons Grace, run by the social, Christian organisation Blå Kors paying for a new passport to be issued to the Spanish citizen. Furthermore, the manager stated that a number of the homeless persons lost the money collected during summer due to the fact that the persons did not have bank accounts.

While the Copenhagen Municipality claimed to have warned the homeless persons prior to the clearing of the park and further claimed that the homeless persons misunderstood this warning due to the fact that they did not understand Danish, one of the homeless persons claimed to have had a fine conversation in English with the police officers, who, however, did not allow the homeless persons to go near their belongings.

While acknowledging the efforts of the Municipality to keep the public areas in a proper condition, the method of doing this is unfortunate – from a humane as well as a legal perspective. Indeed, subsequent to this incident, the Copenhagen Municipality did regret the possibility of not everyone receiving the warning prior to the cleaning. Furthermore, the Municipality stated that it will change the practice for the future by i.a. posting warnings in multiple languages and by possibly placing the property in repositories for a few weeks after the clearing, giving the homeless persons a chance to pick up their belongings. Apart from the method being unfortunate, the presence of the - mostly - foreign homeless persons may be regarded as reflecting not only the Municipality’s issues with destitution and homeless foreigners, but also the difficulties encountered by i.a. job seeking EU citizens in Denmark; see more immediately below and Chapters III.1.1 and IV.2.2.

The access of non-registered EU citizens to social, public financed care homes and shelters

In practice confusion appear to reign in some municipalities about unregistered EU citizen’s entitlement to social assistance and the consequences of the EU citizens’ receipt of social assistance in terms of residence rights.

Accordingly, the practice of the Copenhagen Municipality and the Ministry of Social Affairs and Integration’s interpretation of EU law with regard to non-registered EU citizens not issued with a registration certificate and CPR and National Health Card have been questioned by Kirkens Korshær through its letter and memorandum of 6 June 2013 to Ministry of Social Affairs and Integration.

Apparently, the Copenhagen Municipality through recent years has announced that the so-called Section 110 offers of care homes and shelters are not allowed to receive foreign homeless, including non-registered EU citizens, and that homeless and/or socially exposed EU citizens as a rule are not entitled to social assistance under the Serviceloven (‘Service Act’). This appears to be based on the fact that the municipalities only are paid reimbursement from the State when assistance is provided pursuant to Section 110 to persons staying legally in Denmark. Furthermore, this practice appears to be based on the Act on Active Social Policy Section 12a according to which EU/EEA citizens residing in Denmark as first-time job seekers 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 (see more below Chapter IV.2.2).

In conclusion it hence appears that it is the assumptions of the authorities that non-registered EU citizens seeking Section 110 offers cannot supply for themselves, constitute an unreasonable burden to the Danish society per se, and hence do not stay legally in Denmark.

A closer and more thorough examination of i.a. the duration of the specific EU citizen’s stay, the personal circumstances of the EU citizen concerned or whether the EU citizen acquired the status of worker, self-employed or is a genuine job seeker with actual chances of employment does not appear to be conducted in practice when EU citizens seek the assistance of certain shelters and care homes. By contrast, non-Danish or non-Nordic speaking EU citizens who cannot present National Health Card in practice are reported to be refused by those care homes and shelters paid State reimbursement on grounds of the EU citizens not staying legally in Denmark and thus not entitled to assistance under the Service Act; see more below Chapter IV.2.2 on the practical difficulties encountered by EU citizens.

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30 Cf. e-mails of 7 and 19 June 2013 from an employee within Kompasset.
31 Consolidation Act No. 810 of 19 July 2012.
32 Cf. the Service Act Section 2 stipulating that any person staying legally in Denmark is entitled to assistance under the Act. The Ministry of Social Affairs established an emergency pool for organizations arranging for temporary overnight accommodation for homeless persons during the winter months. I.e. organizations establishing temporary accommodation for foreign homeless persons not encompassed by the Service Act may receive subsidies.
34 Notat vedrørende uregistrerede unionsborgeres adgang til tilbud omfattet af Servicelovens § 110, Kirkens Korshær, June 2013, and Rapport om hjemløse migranter i København, Del 1, Projekt UDENFOR, April 2012, Fonden Projekt UDENFOR, pp. 7-8.
Possibilities of imposing a requirement on specific ID cards on workers at construction sites are examined

As described below Chapter VIII.3.1, following the report issued by the Committee for Counteracting Social Dumping in October 2012,\(^{35}\) the Government and the Red-Green Alliance agreed on the launching of additional initiatives for fighting social dumping in November 2012.\(^{36}\) Among other things, this agreement stipulates that it will be examined whether imposing a requirement on ID cards with or without safety education on persons working at construction sites is desirable. The Ministry of Employment is responsible for conducting the analysis in this regard and must submit its report in September 2013. Imposing a requirement on ID card and safety education on employees at construction sites in the shape previously suggested by construction parties is one of the initiatives the Committee for Counteracting Social Dumping identified as a non-possible initiative, as the Committee assessed such requirement to violate EU law.\(^{37}\) However, while referring to Norway’s experiences with introducing a special ID card in the construction business, the Committee also stated that the introduction of such specific requirement in Denmark may be considered.\(^{38}\)

Systematic, automatic and monthly control of EU/EEA citizens receiving study grants on the basis of their status as workers, cf. Article 14 (2)

As a consequence of the CJEU ruling in the L.N. case (C-46/12),\(^{39}\) the Danish government, along with 4 other parties seated in the Danish Parliament, entered into an agreement entailing the systematic, automatic and monthly control of non-national EU students receiving study grants in Denmark on the basis of their status of workers; see more below Chapter VI.5 on study grants. Accordingly, an administration being provided with input from the eIncome registry and automatically and regularly controlling whether the EU/EEA citizens concerned retain their status of workers has been established. For persons whose income does not appear from the eIncome registry, a separate control procedure has been established. The control implies that the income must be of an extent that the student as a rule is employed for a minimum of 10-12 weekly hours; see more below Chapter V on the general application in Denmark of guiding time-limits for minimum requirements to EU citizens’ weekly working hours.\(^{40}\)

Although this control system has not been established for the purpose of determining the residence rights of EU citizens, but rather to verify that EU citizens are eligible to be regarded as a worker when being awarded with study grants, the establishing of an automatic, systematic and monthly control system of the extent of workers’ employment activities appear to raise issues on incompatibility with Article 14 (2) on retention of the right to residence. This is caused by the fact that albeit Member States may verify if conditions set out in Articles 7, 12 and 13 on right of residence are fulfilled in specific cases where there is reasonable doubt as to whether the conditions are satisfied; such verification shall not be carried out systematically.

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\(^{35}\) Rapport fra Udvalget om modvirknings af social dumping, 27 October 2012.

\(^{36}\) Aftale mellem regeringen og Enhedslisten om: Initiativer mod social dumping 8. november 2012.


\(^{38}\) Rapport fra Udvalget om modvirknings af social dumping, 27 October 2012, pp. 96-97 and 173ff.

\(^{39}\) CJEU judgment of 21 February 2013.

4. **FREE MOVEMENT OF ROMA WORKERS**

On 30 December 2011, the Minister of Social Affairs and Integration presented to the Commission Denmark’s national strategy for Roma inclusion, and in August 2012 the strategy was translated into Danish and forwarded to the municipalities.

The Danish Action Plan for Roma Inclusion has 3 components:

- Fully realising the integration tools available for the benefit of Roma inclusion;
- continuing and strengthening the efforts towards combating poverty and social exclusion in general; and
- disseminating knowledge on best practices and agreed principles for Roma inclusion to the municipal level.

As part of the Danish strategy for Roma inclusion, Denmark informed the Commission of the fact that ethnic data is not registered centrally in Denmark; the Roma community on Denmark is considered to be relatively small; persons with Roma background do not have status of a national minority in Denmark; Denmark chose to promote Roma inclusion through the integrated set of policy measures and no special monitoring mechanisms will be established.

With regard to Roma workers in particular, from the Danish national strategy for Roma inclusion pp. 3-4 it appears i.a. that:

- There might be Roma working within the green sector (agriculture and gardening) and the construction sector, as migrant workers from Eastern Europe are frequently working in these sectors; see more below Chapter IV on the working conditions in those sectors; and
- ‘[...] based on measuring in the period 2007-2010, the Danish Centre against Human Trafficking estimates that half of the prostitutes in the streets of Copenhagen from Romania are Roma. Prostitutes with a Roma background are also present at massage parlors outside Copenhagen. 19 women from Romania, Slovakia and the Czech Republic are identified as victims of trafficking. The Danish Centre against human trafficking is aware, that some of these women are Roma. In 10 cases with minors from Romania, Bulgaria and Slovakia with a Roma background, social workers found varying degrees of indicators of human trafficking.’

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41 Presentation to the European Commission of Denmark’s National Roma Inclusion Strategy, the Ministry for Social Affairs and Integration, Copenhagen, December 2011.
43 This, and other aspects, resulted in the strategy to be considered by some to be unambiuous, cf. *EU’s Roma-politik med Danmark som casestudie* by Louise Lehman Egvang, Master’s Thesis, Department of Business and Politics, Copenhagen Business School, August 2012, pp. 59-70, in particular pp. 67-70.
Chapter II
Members of the Family

1. THE DEFINITION OF FAMILY MEMBERS AND THE ISSUE OF REVERSE DISCRIMINATION

According to Section 2 (1) of the EU Residence Order, family members encompass the following categories of persons:
- the principal person’s spouse
- the principal person’s descendants under 21 years of age and the descendants under 21 years of age of the principal person’s spouse;
- the principal person’s other dependent descendants and any other descendants of the principal person’s spouse who are dependent on the principal person;
- relatives in the ascending line of either the principal person or the principal person’s spouse if they are dependent on the principal person;
- the 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; or
- the principal person’s other family members where serious health grounds strictly require the personal care of the family members by the principal person.

A registered partner is treated as the equivalent of a spouse, cf. Section 2 (2). In addition, Section 2 (3) stipulates that the provisions of the EU Residence Order on spouses apply similarly in cases where a person above 18 years of age cohabits at a shared residence in regular cohabitation of prolonged duration with a principal person above 18 years of age. It is a precondition for the right of residence of a cohabitant that the principal person undertakes to support the applicant, cf. Section 16. These rules concerning cohabiting partners are identical to those applying to the right of Danish citizens to family reunification.

As regards reverse discrimination, various issues have been persistently raised in recent years concerning the rules on residence right for third-country family members of Danish citizens, as well as their implementation in administrative practice. In particular, there have been contentious issues concerning the personal scope of application of the EU rules concerning third-country spouses of Danish citizens. The scope was previously 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. Students and persons with sufficient means, on the other hand, were not entitled to bring their spouses with them back to Denmark upon stay in another EU Member State.

As part of the political agreement 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.

44 A principal person is defined as an EU citizen who has an independent right of residence in Denmark under the EU rules, cf. Section 1 (1) of the EU Residence Order.
45 Cf. Section 9 (1) (i) and (3) of the Aliens Act.
46 CJEU judgment of 25 July 2008 Metock (C-127/08). The political agreement of 22 September 2008 resulted in Executive Order No. 984 of 2 October 2008 amending the 2008 EU Residence Order (No. 300 of 29 April 2008). Detailed guidelines on the right to family reunification under EU law, and on the control measures mentioned below in Section 3, were 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.
cation 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. As this issue was not expressly dealt with in the Metock judgment, the adjustment of administrative practice in this regard should probably be seen as an indirect consequence of the judgment, attempting to prevent further controversy over the Danish implementation of the EU rules pertaining to the exercise of free movement rights by Danish citizens upon return from another Member State.

Previous practice also included a 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. As a result of the CJEU judgment in *Eind* the Ministry of Refugee, Immigration and Integration Affairs adopted new guidelines according to which the returning citizen will be entitled to bring the 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.

2. **ENTRY AND RESIDENCE RIGHTS**

Sections 8-12 of the *EU Residence Order* lay down specific rules on residence rights for family members of workers, self-employed persons, job seekers, 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. Since 2008 the *EU Residence Order* also includes a specific provision on residence right for family members of Danish citizens, cf. Section 13 stating that, to the extent it follows from EU law, family members of a Danish citizen have a right of residence in Denmark beyond the three months period following from Section 2(1) and (2) of the *Aliens Act*.

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*.

While *administrative fees* were previously imposed on applicants for family reunification under the general rules of the *Aliens Act*, payment of such fees were not required if it would be incompatible with EU law, cf. Section 9 h (1) and (2) of the *Aliens Act*. It was made clear in the preparatory remarks that this implied a general exemption of EU citizens and other persons enjoying free movement rights, including EEA and Swiss citizens as well as

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47 Meddelelse om Udlendingeservices sagsbehandling af ansøgninger om familiesammenføring efter EU-reglerne, hvor referencen er dansk statsborger (‘Information on the processing of applications for family reunification under the EU rules where the principal person is a Danish citizen’), Danish Immigration Service, Family Reunification Information No. 5/11, 11 October 2011, para. 4.1.2. See also official information from the Ministry of Justice and the Danish Immigration Service: http://www.nvidanmark.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.nvidanmark.dk/en-us/coming_to_dk/familyreunification/family_reunification_under_eu-law (family members of Danish citizens), accessed 2 July 2013.

48 CJEU judgment of 11 December 2007 *Eind* (C-291/05).


50 Act No. 1604 of 22 December 2010 amending the *Aliens Act*. The fees for applications for family reunification were abolished by Act No. 418 of 12 May 2012 amending the *Aliens Act*, taking effect 15 May 2012.
Turkish citizens falling within the scope of Decision No. 1/80 of the EU-Turkey Association Council.\textsuperscript{51}

3. IMPLICATIONS OF THE METOCK JUDGMENT

As a result of the CJEU judgment in\textit{Metock},\textsuperscript{52} 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 rights, in particular those concerning family members. This decision was implemented by the amendment of the \textit{EU Residence Order}, inserting provisions on the refusal of registration certificates and 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), and Section 26 (1) and (3)).

Furthermore, it has become 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), respectively).

A declaration is also required from the principal person that he or she has established genuine and effective residence in Denmark. If there are reasons to assume abuse of rights, evidence of genuine and effective residence must be submitted by the principal person (Section 23 (1) \textit{in fine} and Section 26 (2) \textit{in fine}); see further on documentation requirements below Section 4.

4. ABUSE OF RIGHTS, I.E MARRIAGES OF CONVENIENCE AND FRAUD

As a particular measure to prevent abuse by Danish citizens upon return from another Member State, it is stipulated in administrative guidelines that the principal person applying for registration certificate or residence card for family members must solemnly declare to have established genuine and effective residence in the host country. If there are reasons to assume that this is or was not the case, the Danish citizen is required to submit evidence of the residence established in the other Member State. A non-exhaustive list of possible documentation has been laid down in administrative guidelines, according to which the evidence will have to be assessed on an individual basis. In principle, therefore, the documentation requirement should not become unreasonable or insurmountable.\textsuperscript{53}

In practice, however, the Danish Immigration Service has occasionally requested certain forms of documentation that it may be difficult or even impossible for the principal person to deliver retroactively, such as evidence of the purchase of daily necessities in the host country.\textsuperscript{54} Even while this may ultimately not be a strictly required means of evidence in order to

\textsuperscript{51} Bill No. 66/2010-11, general remarks para. 2.6.
\textsuperscript{52} CJEU judgment of 25 July 2008 \textit{Metock} (C-127/08). See above Section 1 on further consequences of the judgment.
\textsuperscript{53} Information on the processing of applications for family reunification under the EU rules where the principal person is a Danish citizen, Danish Immigration Service, Family Reunification Information, No. 5/11, 11 October 2011, para. 4.1.4.
\textsuperscript{54} Letters of 21 April 2010, 4 June 2010 and 10 June 2011 from the Danish Immigration Service to the third-country spouses of Danish citizens, resident or ex-resident in Sweden. Such a requirement could potentially
have the family member’s registration certificate or residence card issued, it may nonetheless bring applicants under the impression that the requested forms of documentation are necessary.

This is likely to cause particular problems if the period of residence in another Member State dates several years back, and the relevant documentation may therefore no longer be available. Such problems occurred in some cases where the retroactive assessment of residence in the host country was pending as a result of the widening of the personal scope of application of the EU rules concerning third-country spouses that was part of the implementation of the Metock judgment in 2008, as mentioned above in Section 1. Thus, Danish citizens who were precluded from obtaining residence for their family members upon return from another Member State under previous administrative practices in possible violation of EU law, may have had difficulties in providing sufficient evidence if they managed to get their cases reopened in accordance with the adjusted practice. To some extent, therefore, the documentation requirement may have been an indirect obstacle to the realisation of residence rights under EU law.

While this can be considered a transitory problem due to the adjustment of administrative practices described above, a recent case may indicate a new, and potentially drastic, strategy to tighten the controls exercised in order to prevent - or perhaps rather deter - abuse by Danish citizens attempting to secure residence for their family members upon return from another Member State. In connection with a decision to refuse an application for residence to the third-country spouse of a Danish citizen who claimed to have been living and working in Sweden, the Danish Immigration Service not only considered the information provided by the applicant and his Danish spouse insufficient to provide the necessary evidence for the spouse’s previous genuine and effective residence in Sweden in the relevant period. In addition, the Immigration Service reported the applicant’s Danish spouse to the police, requesting a criminal investigation of the spouse’s submission of information to support the application. The report was submitted to the police notwithstanding the fact that the decision was not final as it could be, and in fact was, appealed to the Ministry of Justice. The Ministry set aside the decision, and the spouse was subsequently issued an EU residence card. Likewise, the police’s investigation did not lead to any criminal charge being raised against the Danish spouse.

In addition to the aforementioned measures taken in connection with the implementation of the Metock judgment in order to prevent abuse of the EU rules on residence rights, in particular those concerning third-country family members of Danish citizens returning from another Member State, a system of random checks was set up by the Ministry of Refugee, Immigration and Integration Affairs in order to scrutinise cases in which family members had applied for residence under the EU rules. According to the political agreement on the State budget for 2010, the number of such cases undergoing particularly thorough control -

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55 Examples of this are letters of 4 June 2010 and of 1 July 2011 from the Danish Immigration Service to the third-country spouses of Danish citizens claiming residence in Sweden in 2002-2004 and in 2004-2006, respectively, as a basis for the spouses’ residence right upon return to Denmark.

56 Letter of 23 March 2012 from the Danish Immigration Service, including copy of the letter reporting the applicant’s spouse to the police.

57 Email of 4 July 2013 from the lawyer representing the Danish citizen and her spouse.
probably subsequent to the initial decision - was to be increased from 25 % to 50 %.\(^{58}\) This control system was significantly modified in 2011 as part of an agreement between the new Government, the Liberal Alliance and the Red-Green Alliance.\(^{59}\)

5. **ACCESS TO WORK**

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 *Aliens Act*, are exempt from the requirement of a work permit. 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*.

6. **THE SITUATION OF FAMILY MEMBERS OF JOB SEEKERS**

The abovementioned rules on residence rights for family members of EU workers apply similarly to the family members of job seekers, cf. Section 8 (3) of the *EU Residence Order*. The period of residence permitted for the purpose of seeking employment is normally limited to 6 months, but may be extended pursuant to Section 3 (4) of the *EU Residence Order* (see above Chapter I.2), and the job seeker will be permitted to bring family members to Denmark for the same duration of time.

While the personal scope of this residence right was previously limited to spouses, registered partners or regularly cohabiting partners, children below 21 years of age, and other dependent family members, job seekers can now bring all the family members as defined in Section 2 (1) of the *EU Residence Order* (see above Section 1). However, as opposed to the close family members of workers and self-employed persons whose residence right is not conditional on economic sufficiency, the residence right of all family members of job seekers is normally based on the condition that the job seeker has such income or other economic means that he or she can provide for the family without becoming a burden to the public, cf. Section 8 (4).

7. **OTHER ISSUES CONCERNING EQUAL TREATMENT**

While various equal treatment issues can be raised as regards equal treatment of EU citizens (see in particular Chapter IV), no such issues seem to be specific to the members of the family of EU citizens, except those mentioned above concerning the possible difficulties in obtaining rights of residence for third-country family members.

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\(^{58}\) [Finanslov 2010: Initiativer på Integrationsministeriets område, Press release from the Ministry of Refugee, Immigration and Integration Affairs, 12 November 2009.](http://www.minds.dk/)  

Chapter III
Access to Employment

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; a requirement which is imposed on most other groups of foreigners.

1. ACCESS TO EMPLOYMENT IN THE PRIVATE SECTOR

Employment under a collective agreement or on individual contract (as opposed to employment as a civil servant, see below Section 2) is not conditional on the applicant being a Danish citizen. Foreign citizens are generally free to hold such posts.60

1.1. Equal treatment in access to employment (e.g. assistance of employment agencies)

Job centres, Workindenmark, Seasonalwork and International Citizen Service Centres

EU/EEA citizens may register with the public job centres, make use of the facilities and receive guidance.61 The 91 public job centres have a website: www.jobnet.dk, available for all job seekers and employers in Denmark; yet available in Danish only.

Along with the job centres, the website www.workindenmark.dk is available for employers and employees. The website is the ‘[…] official Danish website for international recruitment and jobseeking’ and offers a job database, CV database, information on job opportunities as well as information on rules for working and living in Denmark. The job centres further have an international section, EURES, being the ‘[…] international branch of the job centres, servicing employers and job seekers in connection with recruitment or job hunting across national borders.’62

In addition, Workindenmark manages a website www.seasonalwork.dk available to job seekers applying for seasonal work and employers. The Danish Agency for Labour Retention and International Recruitment assumes responsibility for Workindenmark and Seasonalwork alike.

The concept in the job centres is self service and the job centres provide information on e.g.:
• The actual job opportunities in their geographical area;
• the use of the job and CV databases of www.jobnet.dk and www.workindenmark.dk;
• the work out of job applications and/or CV;

60 For general information on the Danish labour market, see Employment in the Danish State Sector, the Agency for the Modernisation of Public Administration, November 2011.
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• work and residence permit/registration certificate, Civil Registration System number (CPR), tax card, public health insurance, employment contract, language school and contact with the authorities;
• local, regional and national education or continuing education opportunities;
• the accreditation of foreign educations;
• the transfer of unemployment benefits;
• cross-border commuting between Denmark-Sweden and Denmark-Germany; and
• the Danish job market.63

Moreover, 4 international ‘Citizen Service Centres’ have been established in the 4 major cities of Denmark (Aalborg, Aarhus, Copenhagen and Odense). The aim of the centres is to make it as easy as possible for foreign employees or job seekers and Danish employers to contact the Danish authorities. Thus, all the authorities a foreign employee typically need to contact are represented at the International Citizen Service Centres. Accordingly, the authorities represented comprise the Danish Tax and Customs Administration (SKAT), the Danish Immigration Service, The Danish Ministry of Employment - international recruitment, Workindenmark, the Regional State Administration, the Danish Agency for Universities and Internationalisation and the local municipal administration.64

The International Citizen Service Centres offer e.g.:
• Help with the paperwork, such as issuance of registration certificates, social security number, tax card and medical card etc.;
• personal guidance on jobseeking, Danish courses, the Danish tax system etc.; and
• information about living and working conditions in Denmark, authorisation and recognition of foreign qualifications, accommodation etc.65

Practice by municipal job centre in providing assistance for job seeking EU citizens

As described above Chapter I.3 (and see below Chapter IV.2.2 where also the difficulties encountered in practice by job seeking EU citizens are described), the relief organisation Kirkens Korshær established a counselling and support offer for homeless migrants in Copenhagen, also offering independent guidance for job seeking migrants specifically by i.a. a guidance on the Danish registration system and a letter of information to employers. Since January 2013, Kompasset recorded more than 400 requests for assistance; the majority apparently from job seeking EU citizens. Furthermore, the vast majority of the inquiries are recorded to be about job seeking due to the fact that EU citizens are reported not to be provided with assistance from the municipal job centres in practice. Apparently, many of the migrants seeking the advice of Kompasset already requested the job centre for assistance at the counter of the job centre. However, the migrants were merely provided with a post card enumerating web addresses (among others www.workindenmark.dk) and were informed that they could use the computers for searches. The application of this procedure by a specific job

63 Act on Active Employment Initiative Part IIff and The Danish job centres/What the job centre can offer %E2%80%93 an overview, accessed on 10 June 2013.
65 Ibid., and The Danish job centres/International Citizen Service, accessed on 10 June 2013.
centre has been confirmed by Kompasset’s manager and the employee themselves when inquiring the specific job centre for information on behalf of EU citizens. However, the extent of the application of this procedure is not known. In so far as job seeking EU citizens are not offered assistance by employment agencies corresponding to that offered to Danish nationals, this raises issues on unequal treatment in access to employment.

Furthermore, as described in more detail below Chapter VIII.3.2 (and Chapter IV.2.2), EU citizens and their family members are encompassed by certain parts of Integrationsloven (‘Act on Integration’), cf. Sections 2 (4) (8) and 2 (5). This means i.a. that EU citizens and their family members residing in Denmark on the basis of the EU rules on free movement are entitled to an introductory course offered by the municipalities pursuant to the Act on Integration Chapter 4a without being issued with a registration certificate, recorded in the Civil Registration System etc. The introductory course comprises a Danish course, a course in Danish society, culture and history and offers aiming at employment.

Moreover, Section 24g provides the legal basis for the municipalities to offer support to companies establishing a special advice function to aliens residing on the basis of the EU rules on free movement (among others).

Consequently, also first-time job seekers are entitled to such advice, courses and offers aiming at employment. Contrary to this, however, in practice it appears that some job centres require from the EU citizens to be issued with a CPR and hence recorded in the Civil Registration System before being entitled to courses, internships, employment with salary subsidy etc., see more below Chapters IV.2.2 and VIII.3.2, which is not in accordance with neither Danish legislation, nor Directive 2004/38/EC Article 25 and raises issues on unequal treatment in access to employment. The extent of this practice is, however, not known.

1.2 Language requirements

For a detailed description of language requirements for employment and access to benefits, please see the Analytical Note on Language Requirements, Denmark, 2013.

Legislation

Concerning equal treatment in access to employment, the central piece of legislation is Forskelshandlingsloven (‘Act on Prohibition against Discrimination on the Labour Market’). The Act covers the activities/behaviour of any employer, anyone who runs guidance and educational activities, anyone deciding on the access to exercise self-employed activity and anyone who decides on the membership of and participation in organizations for employers or employees. The Act applies in recruitment, dismissal, relocation and promotion of employees and further applies on conditions of salary and work, vocational guidance, voca-
tional education, further education and re-education, cf. Section 2 and 3. 72 The Act prohibits direct and indirect discrimination, harassment, instructions on differential treatment and reprisals on grounds of race, colour, religion or belief, political opinion, sexual orientation, age, handicap or national, social or ethnic origin. Certain exceptions apply in more specified circumstances. 73

The Board of Equal Treatment 74 is competent to deal with complaints on violation of i.a. this Act, and has in 2012 interpreted the personal scope of the Act in a broad manner in light of Directives 2000/43/EC and 2000/78/EC. This interpretation results in the prohibition of discrimination as laid down in the Act to comprise all relevant rules and conditions relevant for access to vocational employment; see more below on decision No. 217/2012 where the Board found a writer’s application for a work scholarship submitted to a foundation having the responsibility of awarding public means for the purpose of promoting Danish creative art to be encompassed by the scope of the Act. The Board further found a job centre to be comprised by the Act due to the fact that the job centre in the specific situation carried out guidance and education activities; see more below on decision No. 240/2012.

Language requirements may constitute indirect discrimination on grounds of ethnic origin in situations where an employer imposes a language requirement which is not reasoned and objectively justifiable, is disproportionate and without relevance for the maintenance of the job in question, cf. Section 1 (3) on provisions, criteria and practice being seemingly neutral, but placing persons of a specific national or ethnic origin etc. in a less favourable position than other persons. Hence, the Board of Equal Treatment has in various cases decided on the compatibility of language requirements with the Act, as described in the report for 2010-2011 and below.

Practice from the Board of Equal Treatment

Decision No. 240/2012, made on 14 March 2012: Danish language requirement imposed on an unemployed German citizen by a job centre as a prerequisite for working in a kitchen as part of an activation course was found to be justifiable, as the purpose of the activation project was to improve the German citizen’s Danish language skills

Facts of the case: A German citizen claimed to have been subjected to discrimination on grounds of national origin in connection with a job centre’s decision that the complainant, who participated in a municipal activation project, should no longer work in a kitchen.

The complainant attended language school thrice a week and participated in a municipal activation project twice a week.

72 The National Labour Market Authority, which is an authority under the Ministry of Employment, issued a circular to the Act on Prohibition against Discrimination on the Labour Market: Circular No. 60339 of 29 October 1998. The Circular lays down guidelines for employment agencies and their dealing with employers and ethnic minorities. According to the Circular para. III.B, 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. In general, qualification requirements have to be justified by considerations of satisfactory maintenance of the job in question according to the Circular.


74 Official website http://www.ligebehandlingsnaevnet.dk/.
In 2010 the complainant was given the possibility to work as an assistant in a kitchen by an employee at the activation venue as part of the activation project run for unemployed by the municipality. The caseworker at the job centre was on vacation at the time of this arrangement. When the caseworker returned from her holidays, she ceased the arrangement.

The parties’ claims: The complainant held that the caseworker at the job centre did not become aware of the arrangement until the point when she returned from her holidays. When the caseworker returned from her holidays, she ceased the complainant’s work in the kitchen on grounds of insufficient language knowledge. The complainant further held that she encountered no difficulties with her colleagues in the kitchen and that the caseworker had antipathy against her since the beginning.

The job centre, on the other hand, held that the purpose of the complainant’s participation in the activation project was to improve her language knowledge due to the fact that the job centre was of the opinion that the complainant’s language skills did not develop in a satisfactory manner through her participation in language school thrice a week only. Further, the job centre held that the job centre and the coordinator of the complainant’s activation course at the activation venue made the arrangement entailing her working in the kitchen. Furthermore, the coordinator informed the job centre that there were language difficulties. Moreover, the job centre held that it is only up to the job centre to determine how a citizen may enter the labour market as soon as possible.

The Board’s decision: Initially, the Board found that the job centre was encompassed by the Act due to the fact that the job centre in the specific situation carried out guidance and education activities. The Board stated that the job centre made the decision on ceasing the arrangement entailing the complainant working in the kitchen on grounds of insufficient Danish language skills. On this background, the Board found that the complainant had been subjected to indirect discrimination on grounds of national origin. However, as the purpose of the complainant’s participation in the activation project was to improve her language skills, and as the complainant was informed by the activation project that there were language difficulties in connection with her working in the kitchen, the decision to change the activation initiatives made by the job centre was found to be reasoned.

Decision No. 217/2012, made on 8 February 2012: Danish language requirement imposed on a writer being a Danish citizen of Uzbekistan origin as a prerequisite for being awarded with a work scholarship for artists by a foundation was found to constitute indirect discrimination on grounds of ethnic origin, as the requirement was found not to be appropriate or necessary for achieving the purpose of the foundation to promote Danish creative art

Facts of the case: A Danish citizen originating from Uzbekistan claimed to have been subjected to discrimination on grounds of ethnic origin in connection with the complainant applying a foundation for a work scholarship available to artists.

The complainant was a writer who published two books in Danish. The original manuscripts were written in Russian, as this was the mother-tongue of the complainant, and translated into Danish.

In 2011 the complainant’s application for a work scholarship was rejected as the foundation required applicants to have published minimum one work in Danish. The Committee deciding on the award of scholarships found that the complainant did not publish a work in Danish as her work was not written in Danish, but rather translated by a translator into Danish.
Subsequent to the Committee’s decision, the writer’s mentor addressed the Committee by letter and accounted for the reasons for considering the Committee’s rejection as discrimination. Following this letter, the Committee informed the mentor that the Committee would consider its practice and the possible change of practice next year.

The parties’ claims: The complainant claimed to have been subjected to direct discrimination on grounds of ethnic origin. She further stated that the only source for her maintaining her work as a writer were work scholarships and library duties, which she did not receive either. The complainant held that the practice by the foundation at stake prevented her from applying for means on terms equal to those writers of Danish origin.

The foundation, on the other hand, held that the Executive Order applicable to the foundation left room for interpretation with regard to when an artist was considered to be Danish and when the foundation promoted Danish creative art. The foundation further held that the requirement on the author writing her/his work in Danish was based on the Committee having to evaluate the artistic quality of the writer and not of the translator. Moreover, other artists of other ethnic origin than Danish had been awarded work scholarships from the foundation on a regular basis. However, as a result of the approach from the complainant’s mentor, the foundation decided to alter the interpretation of Danish art, resulting in Danish literature to be interpreted as literature written in Danish and literature written by authors residing in Denmark, who publish in Danish and who have a significant impact on Danish literature and culture.

The Board’s decision: Initially, the Board stated that the Act on Prohibition against Discrimination on the Labour Market was to be interpreted in light of Directives 2000/43/EC and 2000/78/EC. Further, the Board found that the Directives were to be interpreted in a broad manner resulting in the prohibition on differential treatment to encompass all rules and conditions being of relevance to access to vocational employment. Accordingly, the Board found that a writer’s application for a work scholarship submitted to a foundation having the responsibility of awarding public means for the purpose of promoting Danish creative art was comprised by the scope of the Act. The Board further made the observation that the Danish language requirement was imposed on the book’s manuscript, and that the language requirement had the effect of placing persons with another ethnic origin than Danish in a less favourable position than ethnic Danes due to mother-tongues. As the Board did not find the language requirement to be appropriate or necessary for achieving the purpose of the foundation to promote Danish creative art, the Board found the practice of the foundation to constitute indirect discrimination on grounds of ethnic origin.

2. ACCESS TO EMPLOYMENT IN THE PUBLIC SECTOR


State employers have a special obligation to prevent indirect and direct discrimination and to ensure equal opportunities in access to recruitment, education, promotion and other working conditions for all employees regardless of gender, religion, ethnic origin etc. as stated in Samarbejdsaftalen (‘Co-operative Agreement’), Section 5 (3), which is an agreement on co-operation and co-operation committees in the State’s companies and institutions.
Within the Agreement, i.a. Directives 2000/48/EC and 2000/78/EC are implemented. Apart from the legislation on prohibition of differential treatment on specific grounds, a public employer is subject to administrative law, the principle of equality (‘lighedsgrundsætning’), the principle of legality (‘legalitetsprincippet’) and the rule on instruction (‘instruktionsreglen’).

2.1. Nationality conditions for access to positions in the public sector

Introduction

No major developments appear to have occurred in 2012-2013 as compared to last years’ reporting and the Commission Staff Document on the Free movement of workers in the public sector, SEC(2010) 1609, and Professor Ziller’s Report for the European Commission on the Free Movement of European Union Citizens and Employment in the Public Sector, 2010. It should be noted, however, that in 2011 and 2012, the Minister of Justice affirmed the retention of the Danish nationality condition imposed on police officers employed in the actual police force.76

‘In general, there is no requirement of Danish nationality in connection with appointments in central government administration. However, there are exceptions with regard to certain positions within the area of the Ministry of Defence and with regard to the appointment as judges and police officers.’ ‘With effect from 2009, managers in departments, government agencies and directorates, etc. are in principle employed on contractual terms under the framework agreement regarding the employment of managers on a contract basis in the state sector. This does not apply to permanent secretaries, who continue to be employed as civil servants. Consequently, over the years there has been a drop in the proportion of civil servants from 44 per cent in 1996 to 26 per cent in 2010.’ 77

Constitutional Act

Pursuant to Grundloven (‘Constitutional Act’) Section 27 (1), Danish nationality is a prerequisite for employment as a civil servant.78 This is modified, however, by the fact that foreign citizens can be employed on conditions similar to those of civil servants in positions where Danish citizens are employed as civil servants. A rule on this is inserted in Tjenestemandsloven (‘Act on Civil Servants’)79 and Tjenestemandspensionsloven (‘Act on Civil Servants’ Pension’),80 and reference is made to this rule and its connection with Article 45 TFEU in the Guidance on Personnel Administration.81 Furthermore, in Ansatetelsesformcirkulæret

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75 Circular No. 9203 of 7 June 2011, general remarks. Cf. also Personaleadministrativ Vejledning (‘Guidance on Personnel Administration’) para. 15.2.2.10, 11 January 2013, issued by the Agency for the Modernisation of Public Administration, an agency within the Ministry of Finance, to public employers.
77 Quotes from Employment in the Danish State Sector, the Agency for the Modernisation of Public Administration, November 2011, pp. 19 and 15, respectively.
78 Constitutional Act No. 169 of 5 June 1953.
79 Consolidation Act No. 488 of 5 May 2010, Section 58 c.
80 Consolidation Act No. 489 of 6 May 2010, Section 19 (1).
81 Paras. 15.2.2.2 and 15.2.2.4.
Circular on Employment Form and Guidance on Personnel Administration

Circular on Employment Form specifies the special positions in the State and the Evangelical Lutheran Church in Denmark where appointments as civil servants are confined. If the position is not governed by the Circular, the employment is instead covered by collective agreements or regulations or based on an individual contract (and possibly by labour legislation), and aliens are free to hold such posts on terms similar to those of Danish citizens.

Pursuant to the Guidance on Personnel Administration, EU/EEA citizens’ entitlement to be employed on terms similar to those of civil servants is limited by restrictions justified by considerations of 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 the position, unless the position is comprised by restrictions justified by regard for public order, public security and public health. The Guidance further stipulates that the rules on free movement do not apply to positions in the public sector. Furthermore, the Guidance stipulates that the case law from the CJEU determines that Article 45 (4) applies only to posts involving exercise of public authority and responsibility for handling the general interests of the State or of other public authorities. Moreover, these criteria must be assessed on a case-by-case basis, taking into account the tasks and responsibilities covered by the post in question.

2.2. Language requirements

For a detailed description of language requirements for employment and access to benefits, please see the Analytical Note on Language Requirements, Denmark, 2013.

Legislation

Concerning equal treatment in access to employment, the central piece of legislation is the Act on Prohibition against Discrimination on the Labour Market. The Act covers the activities/behaviour of any employer, anyone who runs guidance and educational activities, anyone deciding on the access to exercise self-employed activity and anyone who decides on the membership of and participation in organizations for employers or employees. The Act applies in recruitment, dismissal, relocation and promotion of employees and further applies on conditions of salary and work, vocational guidance, vocational education, further education and re-education, cf. Section 2 and 3. The Act prohibits direct and indirect discrimination,

82 Circular 210 of 11 December 2000 Section 9.
83 Cf. also Employment in the Danish State Sector, the Agency for the Modernisation of Public Administration, November 2011, pp. 18-19.
84 Paras. 15.2.1.4 and 15.2.2.4.
85 The National Labour Market Authority, which is an authority under the Ministry of Employment, issued a circular to the Act on Prohibition against Discrimination on the Labour Market: Circular No. 60339 of 29 October 1998. The Circular lays down guidelines for employment agencies and their dealing with employers and ethnic minorities. According to the Circular para. III.B, 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 rele-
harassment, instructions on differential treatment and reprisals on grounds of race, colour, religion or belief, political opinion, sexual orientation, age, handicap or national, social or ethnic origin. Certain exceptions apply in more specified circumstances.  

Language requirements may constitute indirect discrimination on grounds of ethnic origin in situations where an employer imposes a language requirement which is not reasoned and objectively justifiable, is disproportionate and without relevance for the maintenance of the job in question, cf. Section 1 (3) on provisions, criteria and practice being seemingly neutral, but placing persons of a specific national or ethnic origin etc. in a less favourable position than other persons. Hence, the Board of Equal Treatment has in various cases decided on the compatibility of language requirements with the Act, as described in the DK-Report 2010-2011 and above para. 1.2.

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

Guidance on Personnel Administration

Pursuant to the Guidance on Personnel Administration, EU/EEA citizens’ entitlement to be employed on terms similar to those of civil servants is limited by restrictions justified by considerations of public order, public security and public health. Moreover, the job advertisement may not impose a requirement of Danish citizenship in a manner discouraging EEA citizens from applying for the position, unless the position is comprised by restrictions justified by regard for public order, public security and public health. The Guidance further stipulates that the rules on free movement do not apply to positions in the public sector. Further, the Guidance stipulates that the case law from the CJEU determines that Article 45 (4) applies only to posts involving exercise of public authority and responsibility for handling the general interests of the State or of other public authorities. Moreover, these criteria must be assessed on a case-by-case basis, taking into account the tasks and responsibilities covered by the post in question.

In a paragraph of the Guidance on Personnel Administration dealing with salary seniority it is expressly stipulated that previous employment in other Member States shall be taken into account to the same extent as had it been employment in Denmark. This applies to Danish citizens and other EU/EEA citizens alike. A comparison of previous employment must thus be performed on an objective and non-discriminatory basis. In the guidelines reference is made to the principle on non-discrimination, the jurisprudence of the CJEU and the Communication from the Commission of December 2002.
3. **OTHER ASPECTS OF ACCESS TO EMPLOYMENT**

*Job applications for jobs abroad do not count towards meeting the requirement on a certain number of applications*

When being a member of an unemployment fund in Denmark, a certain number of job applications must be send by the unemployed in order to be regarded as an active job seeker and thus to be entitled to benefits.

In her reply of 12 October 2012 to a question from the Parliament, the Minister of Employment stated that job applications for employment relationships abroad do *not* count towards the requirements as the unemployed must be available to the Danish labour market.\(^{91}\)

**Danish courses**

Pertaining to *language courses* and *introductory courses*, *Lov om danskuddannelse til voksne udlendinge m.fl.* (‘Act on Danish Courses for Adult Aliens et al.’)\(^{92}\) and the *Act on Integration* were amended in 2011 to ensure compatibility with Directive 2004/38/EC Article 25, as described in the DK-Report 2010-2011; see also below Chapter VIII.3.2.\(^{93}\) Also, in 2010, the *Act on Integration* was amended to encompass also EU citizens and their family members.\(^{94}\) To this status, no amendments were made in 2012-2013.

Pursuant to the *Act on Danish Courses for Adult Aliens et al.* and the corresponding Executive Order, adult aliens with regular residence pursuant to the EU rules on free movement and with residence in the municipality may receive education by attending Danish courses etc. provided by the municipality.\(^{95}\)

EU/EEA frontier workers are entitled to attend Danish courses on terms equal to those issued with a residence permit and residing in Denmark.\(^{96}\) Danish courses are cost-free for all aliens encompassed by the Act.\(^{97}\)

Further, a free vocational offer on Danish courses on the internet (‘Online Dansk’) is available for aliens.\(^{98}\) In addition, cost-free ‘intro-Danish’, i.e. Danish courses aiming at the Danish labour market for aliens above 18 residing in Denmark on a more temporary basis with the purpose of employment or covered by Section 2a (frontier workers), is available. The offer of Intro-Danish applies to all aliens with ordinary employment, continuous lawful residence and a right to take up employment in Denmark.\(^{99}\)

Pursuant to the *Act on Integration*, EU citizens and their family members are encompassed by certain parts of the Act.\(^{100}\) This entails an entitlement to an introductory course

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91 Beskæftigelsesudvalget 2011-12, BEU alm. del, endeligt svar på spørgsmål 432, 12 October 2012.
92 Consolidation Act No. 1010 of 16 August 2010.
93 By Act No. 462 of 18 May 2011.
94 By Act No. 571 of 31 May 2010.
95 Cf. the Act Section 2 (1) (ii), the abovementioned amendment and Executive Order No. 779 of 29 June 2011. See also Guidance No. 9242 of 21 June 2011, para. 2.2.1.
96 Cf. Section 2a. The provision was adopted by Act No. 485 of 12 June 2009, described in detail in the 2009-2010 report. See also Guidance No. 9242 of 21 June 2011, para. 2.2.5.
97 Cf. Section 14. The provision was adopted by Act No. 485 of 12 June 2009, described in detail in the 2009-2010 report.
98 Cf. Section 16a.
100 Cf. Section 2 (4) (viii). The group of people comprised by the *Act on Integration* was extended by Act No. 571 of 31 May 2010, amended by Act No. 462 of 18 May 2011.
offered by the municipalities pursuant to the Act Chapter 4a for EU citizens and their family members residing in Denmark on the basis of the EU rules on free movement without being issued with a CPR, registration certificate etc. In practice, however, some job centres appear to require that the EU citizen concerned is issued with a CPR; see more above Section 1.1 and below Chapters IV.2.2 and VIII.3.2. The introductory course comprises a Danish course, a course in the Danish society, culture and history and offers aiming at employment.\textsuperscript{101}

Moreover, the \textit{Act on Integration} provides the legal basis for the municipalities to offer support to companies establishing a special advice function to aliens residing on the basis of the EU rules on free movement (among others).\textsuperscript{102}

\textsuperscript{101} Cf. Section 24c and explanatory remarks to Bill No. L 149/2010-11 of 23 February 2011, general remarks para. 2.6.

\textsuperscript{102} Cf. Section 24g.
Chapter IV
Equality of Treatment on the Basis of Nationality

Characteristics of the Danish labour market

‘Collective agreements between the labour market parties are a significant element of the Danish labour market. The point of departure is that as long as the labour market parties themselves are able to reach agreement, the Government will intervene as little as possible in the employees’ conditions. This is the key aspect of the traditional Danish model. [...] It is [...] a characteristic of the Danish labour market - both the public and private sectors - that it is based on the conclusion of collective agreements subject to negotiation between employers and employees through their organisations. Collective bargaining rights rest on the general agreements concluded between representatives of the employers and employees as well as on “Normen” (the code of practice governing the resolution of industrial dispute). [...] Terms of pay and employment that are agreed through collective bargaining apply also to non-unionised employees within the same staff category. [...] In the public sector, there is a consensus that the implementation of EU directives on labour market and social-related issues is to take place, whenever possible, within the framework of the Danish model i.e. through collective agreements. [...] The relationship between the employer and the individual employee is as a main rule regulated by collective agreement. There are, however, a number of labour market laws which regulate the terms that apply to special groups of employees or apply to special situations.’

Consequently, when a foreign employee is hired directly by a Danish business, the Danish rules – including the collective agreements applicable to the Danish company – apply to the employment relationship, regardless of the employee’s nationality. Special rules apply to the hiring-out of temporary foreign workers by a foreign temporary employment agency to a Danish business, and also to foreign workers stationed in Denmark as part of a contract concluded with a business based in another Member State.

Legislative prohibitions on discrimination

Discrimination on grounds of nationality is not prohibited in national, Danish legislation per se, but may indirectly be prohibited on other grounds, such as race and ethnic origin. Discrimination on the grounds of nationality may thus be included in more general legislation on discrimination as described below.

Concerning equal treatment in employment, the central piece of legislation is the Act on Prohibition against Discrimination on the Labour Market. The Act covers the activities/behaviour of any employer, anyone who runs guidance and educational activities, anyone deciding on the access to exercise self-employed activity and anyone who decides on the

103 Quotes from Employment in the Danish State Sector, the Agency for the Modernisation of Public Administration, November 2011, pp. 5-6.


membership of and participation in organizations for employers or employees. The Act applies in recruitment, dismissal, relocation and promotion of employees and further applies on conditions of salary and work, vocational guidance, vocational education, further education and re-education, cf. Section 2 and 3. 106 The Act prohibits direct and indirect discrimination, harassment, instructions on differential treatment and reprisals on grounds of race, colour, religion or belief, political opinion, sexual orientation, age, handicap or national, social or ethnic origin. Certain exceptions apply in more specified circumstances. 107

As regards discrimination on grounds of nationality, differential treatment on the grounds of citizenship is not in itself covered by the Act. However, a requirement on citizenship may be categorized as indirect discrimination on grounds of national or ethnic origin. 108

The Danish Constitutional Act Section 70 stipulates that nobody may be deprived of access to the full enjoyment of civil and political rights or evade the fulfilment of any general civic duty on the grounds of his/her profession of faith or descent.

Section 71 further stipulates that the personal liberty is inviolable and that no Danish citizen may be subjected to any form of imprisonment on the grounds of his/her political or religious convictions or his/her descent.

Also, Straffeloven (‘Criminal Code’) Section 266b stipulates that any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information, by which a group of people is threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment. 109

Further, Lov om forbud mod forskelsbehandling på grund af race m.v (‘Act on Prohibition on Differential Treatment on Grounds of Race etc.’) prohibits differential treatment performed by persons within commercial or public businesses in serving a person or giving a person access to an area open to the public on the grounds of race, colour, national or ethnic origin, religion, or sexual orientation. 110

Moreover, Lov om etnisk ligebehandling (‘Act on Ethnic Equal Treatment’) deals with public and private activities outside the labour market and prohibits against direct and indirect discrimination, harassment, instructions to discriminate and reprisals on the grounds of race or ethnic origin. Certain exceptions apply in more specified circumstances. 111

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106 The National Labour Market Authority, which is an authority under the Ministry of Employment, issued a circular to the Act on Prohibition against Discrimination on the Labour Market: Circular No. 60339 of 29 October 1998. The Circular lays down guidelines for employment agencies and their dealing with employers and ethnic minorities. According to the Circular para. III.B, 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. In general, qualification requirements have to be justified by considerations of satisfactory maintenance of the job in question according to the Circular.


109 Consolidation Act No. 1007 of 24 October 2012.


111 Consolidation Act No. 438 of 16 May 2012.
1. WORKING CONDITIONS – DIRECT AND INDIRECT DISCRIMINATION

Introduction

As described in last years’ report, foreign workers are being traded, forced, cheated and/or exploited in Denmark to what appears to be to an increased and critical extent.

According to reports published by the Economic Council of the Labour Movement\(^{112}\) in 2013, the salary of temporary foreign workers is low (between DKK 9,000-14,000 a month), and the number of Eastern European workers, which now constitutes the largest group of foreign workers in Denmark, has increased from 35,000 to almost 56,000 persons in 4 years.\(^{113}\)

Furthermore, in 2013 the Danish Centre against Human Trafficking published a compiled report of the 3 reports of the Centre on human trafficking for forced labour in Denmark in the 3 fields of cleaning, agriculture and nurseries, and au pair work - as described in last years’ report. The report concludes that there are ‘[…] many examples of exploitation of labour, and in some cases there are indicators of human trafficking for forced labour, although not to an extent where it is possible to identify actual cases of human trafficking.’\(^{114}\)

Enhanced political efforts against illegal work and/or social dumping\(^{115}\)

Following the political agreement on additional initiatives for fighting social dumping concluded in November 2012, a number of measures have been introduced, as described further below Chapter VIII.3.1.

The measures adopted since last years’ report on the background of the political agreement include measures applicable to foreign service providers, such as

- more information required from foreign service providers in the RUT-register;
- the possibility of giving public access to certain information about foreign service providers (more information is required from foreign service providers than from Danish service providers) with the purpose of strengthening the trade union’s possibilities of enforcing the conditions of the Danish labour market;
- the reduction of the deadline for foreign service providers for reporting changes from 8 days to the next weekday; and
- authorising the Danish Working Environment Authority to issue administrative fines to foreign service providers not meeting the requirements.\(^{116}\)

\(^{112}\) Official website [http://ae.dk/english](http://ae.dk/english).


\(^{115}\) In this context, ‘social dumping’ is defined as situations where the salary and working conditions of foreign employees are below the usual Danish level and situations where foreign companies work in Denmark without complying with the relevant Danish legislation and rules, cf. Rapport fra Udviklet om modvirkning af social dumping, 27 October 2012 p. 12. Accordingly, ‘social dumping’ is a broad concept comprising also illegal work.

\(^{116}\) Lov om ændring af lov om udstationering af lønmodtagere m.v. (’Act on Amendment of Act on Stationing of Employees etc.’), Act No. 611 of 12 June 2013, cf. Bill No. L 195 of 2012/1.
Furthermore, measures applicable to workers have been introduced, such as
• the reduction of the tax relief on travel expenses;
• the taxation in Denmark under the rules on limited tax liability of hiring-out of labour when foreign workers with a foreign employer perform work that are an integrated part of the work of a Danish business\(^\text{117}\) (this does not apply to performing artists, musicians, performers or sportspersons);\(^\text{118}\) and
• the taxation in Denmark under the rules on limited tax liability of foreign workers’ income from work performed in Denmark for a foreign business when the workers stay in Denmark for one or more periods of a total of 183 days within a 12 months’ period.\(^\text{119}\)

In addition, Act No. 595 of 12 June 2013, entering into force on 1 July 2013, aims at implementing Directive 2008/104/EC on temporary agency work. The Act provides for temporary agency workers to be covered by collective agreements entered into by the user business when the temporary worker performs work falling within the scope of the collective agreement, or by collective agreements entered into by the temporary employment agency.\(^\text{120}\) Accordingly, the Minister of Employment states in her reply to a question from a member of the Danish Parliament that the Act lays down a principle of equal treatment of temporary workers with the user business’ own employees, and also that the Minister further expects more temporary employment agencies to enter into collective agreements and hence that the possibility of running temporary agency business with salaries below the typical Danish level is circumscribed.\(^\text{121}\)

**Practice by the Board of Equal Treatment**

*Decision No. 239/2012, made on 14 March 2012: No evidence supported a German citizen’s claim on being paid salary less than agreed upon when being employed in a municipal wage*

\(^{117}\) Two recent binding answers from the National Tax Board deals with the concept of hiring-out of labour and work being an integrated part of the work of a Danish business respectively in relation to a consultant hired to perform a project independently and having professional qualifications the business does not have (SKM2013.432.SR), and substitutes working for a maximum of half a year for a concern in connection with transferring a specific task from the concern’s Swedish business to the concern’s business in Denmark (SKM2013.433.SR). In the first case the National Tax Board held that the employment relationship constituted hiring-out of labour (and hence the consultant was subject to taxation in Denmark pursuant to the rules on hiring-out of labour), and in the second case the National Tax Board held that the employment relationship did not constitute hiring-out of labour (and hence the temporary workers were not subject to taxation in Denmark under the rules on hiring-out of labour).

\(^{118}\) The Danish Government presented a plea in Case C-53/13 regarding a request for a preliminary ruling on whether Articles 56 and 57 prevent national rules requiring a business hiring labour from a business based in another Member State (the supplier) to withhold and pay income tax for the workers, when the obligation to withhold and pay tax is otherwise imposed on suppliers based in the Member State concerned. According to the Danish Ministry of Taxation, the ruling of the case is of importance to the Danish rules on taxation in Denmark of the hiring-out of labour, cf. Notat til Folketingets Europaudvalg og Folketingets Skatteudvalg om afgivelse af indlæg i EU-Domstolens sag C-53/13 Strojimy Prostějov, a.s. mod Odvolací finanční ředitelství, Europaudvalget 2012-13, EUU Alm.del Bilag 401, 17 May 2013.

\(^{119}\) *Lov om ændring af ligningsloven, kildeskatteloven og personskatteloven* (‘Act on Amendment of the Tax Assessment Act, the Withholding of Tax Act and the Act on Income Tax’), Act No. 921 of 18 September 2012, cf. Bill No. L 195, 2011/1. Also, taxation in Denmark of the foreign income of persons who are fully liable to pay tax in Denmark was introduced by the repeal of the *Withholding of Tax Act* Section 33A. However, this provision was later re-introduced; see more below Chapter VI.1.

\(^{120}\) Cf. Bill No. L 209, 2012/1 of 17 April 2013.

\(^{121}\) Beskæftigelsesudvalget 2012-2013, L 209, endelig svar på spørgsmål 21, 28 May 2013.
subsidy job, and if this was the case, no evidence suggested that this was due to his national origin.

**Facts of the case:** A German citizen was employed in a municipal wage subsidy job from June 2010 to December 2010.\(^{122}\)

**The parties’ claims:** The complainant claimed that he did not receive the salary agreed upon in his wage subsidy employment, and that he was subjected to differential treatment on grounds of his national origin. The complainant held that in connection with the employment, he signed a contract for the salary of DKK 130 an hour for 37 weekly working hours (i.e. full-time). From his pay checks it appeared that he was paid respectively DKK 118 an hour for 35 hours a week and DKK 113 an hour for 30 hours a week.

The municipality on the other hand held that by mistake the complainant never signed the letter of appointment. Further, the complainant’s employment was covered by the collective agreements applicable at any time. Moreover, the complainant interrupted the employment in November 2010 notwithstanding the fact that the agreement ran until December 2010.

**The Board’s decision:** The Board emphasized the circumstance that there was no information in the case supporting the complainant’s claim that he received salary less than agreed upon, and - if this was the case - that this was due to the complainant’s national origin. Hence, the Board did not find that the complainant had proved actual circumstances giving rise to assume that the municipality had subjected the complainant to differential treatment.

**Decision No. 5/2013, made on 9 January 2013:** A Romanian citizen who, together with his trade union, settled a case on overtime work, underpayment etc. with his employer was not entitled to demand further, as the case was settled in full and final settlement. Accordingly, the Board refused to process the complaint.\(^{123}\)

**Facts of the case:** A Romanian citizen claimed to have been subjected to differential treatment and harassment on grounds of ethnic origin in connection with employment as an agricultural worker. In August 2012, a mediation meeting was set up between the 2 parties, and a settlement was made. The meeting was about overtime work, insufficient and misleading letter of appointment and lack of payment for overtime work with holiday pay. According to the settlement, the employer was to pay the claim to the complainant. Consequently, the agreement was concluded in full and final settlement.

**The Board’s decision:** Due to the fact that the complainant together with his trade union settled the case out of court in full and final settlement, the Board found that there was no information giving reasons for the complainant to demand further. Accordingly, the Board refused to process the complaint.\(^{124}\)

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\(^{122}\) The case is moreover about social assistance. This part of the case is not dealt with below, as it falls outside the scope of this Chapter.

\(^{123}\) Cf. also the article available at [http://nyheder.3f.dk/article/20130604/NYHEDER/130539977/3102](http://nyheder.3f.dk/article/20130604/NYHEDER/130539977/3102), accessed on 2 July 2013, which most likely deals with this specific case and also with another case on underpayment etc.

\(^{124}\) It might be questioned whether a full and final settlement on payment etc. in fact precludes the processing of a complaint on discrimination.
Cases settled by industrial arbitration

Ruling of 4 January 2013 in a dispute between the trade union 3F vs. the Danish Construction on whether 9 Polish workers received payment in accordance with the collective agreement for all working hours, and subsidiary whether the 9 Polish workers received payment for all working hours within the agreed 37 weekly working hours: The 9 Polish workers were to be paid additional salary in accordance with the agreed 37 weekly working hours.

Facts of the case: From approximately August 2011 through October 2012, the company DK Totalentreprise performed work in connection with the renovation of a number of blocks of flats. The 9 Polish carpenters were employed to perform the work. The Polish workers were employed to perform work 37 hours a week for an hourly rate of DKK 115. The Polish workers were installed in a house about 25 kilometres from the construction site, and vans were made available to the workers by the employer for the purpose of transportation to and from the construction site. From a GPS based driving report it appeared that one van was at the construction site between 28.23 and 45.28 hours during the week days. The van was not at the construction site during weekends. The 2 other vans appeared not to have a GPS installed. The employer further applied an electronic pay check system.

The parties’ claims: 3F claimed that the 9 Polish employees worked from 07.00 to 17.00 every day. 3F further claimed that the workers were not provided with pay checks as was required by the collective agreements and that the hourly filings were not correct. 3F further claimed that the employees tried to correct the payment of salary, but due to language difficulties the employees were not able to address other persons than the company’s representative at the construction site who managed the hourly filings. Accordingly, 3F held that the employees should either be paid for overtime work or subsidiary for the agreed 37 weekly working hours. The Danish Construction, on the other hand, claimed that it was the responsibility of the employee to ensure that the hourly filings were correct and that the employees received salary in accordance with the hourly filings. The Danish Construction further claimed that no manager required the employees to work overtime and that there was no evidence of the 9 Polish employees working from 07.00 to 17.00.

The ruling: With regard to the daily working hours, the arbitrator found that the employer - regardless of own carelessness - substantiated that the Polish employees did not work daily from 07.00 to 17.00 in the entire employment period. Accordingly, the Polish workers were not to be paid for overtime work.

Regarding the claim on payment for 37 weekly working hours, the arbitrators found that it followed from the collective agreement that the workers were entitled to be paid for 37 weekly working hours as a rule. On the basis of the information presented by the employer, the average number of weekly working hours was 25.41 only. Further, the employer was found not to consider itself obligated to ensure that the employees had in fact access to work for 37 hours a week. It also appeared to be of importance to the arbitrators that the employer did not record the Polish workers’ absence from the construction site. On this basis the arbitrators found that the employer was obliged to make additional payment of salary to the 9 Polish workers. The salary was reduced by an estimated amount due to the fact that the workers’ undoubtedly had holidays and other absence from the construction site. Hence, DK Totalentreprise ApS was to pay the 9 Polish workers DKK 500,000.
DENMARK

SPECIFIC ISSUE: WORKING CONDITIONS IN THE PUBLIC SECTOR

- Recognition of professional experience for the purpose of determining the working conditions (e.g. salary; grade, career perspectives)
- Taking into account of diplomas for determining working conditions (salary, grade, career perspectives etc.)
- Equal treatment in relation to issues like civil servant status, trade union rights etc.


‘The majority of those working in the state sector are employed under a collective agreement or as civil servants. They are comprised by the collective bargaining competence of the central organisations.’

Constitutional Act

Pursuant to the Constitutional Act Section 27 (1), Danish nationality is a prerequisite for employment as a civil servant. This is modified, however, by the fact that foreign citizens can be employed on conditions similar to those of civil servants in positions where Danish citizens are employed as civil servants. A rule on this is inserted in the Act on Civil Servants and the Act on Civil Servants’ Pension, and reference is made to this rule and its connection with Article 45 TFEU in the Guidance on Personnel Administration. Furthermore, in the Circular on Employment Form, reference is made to the relevant provision of the Act on Civil Servants.

Circular on Employment Form, Guidance on Personnel Administration, Circular on Salary Seniority and Circular on Grade for Employees in the State

The Circular on Employment Form specifies the special positions in the State and the National Church where appointments as civil servants are confined. If the position is not governed by the Circular, the employment is instead comprised by collective agreements or regulations or based on an individual contract (and possibly by labour legislation), and aliens are free to hold such posts on terms similar to those of Danish citizens.

Pursuant to the Guidance on Personnel Administration, EU/EEA citizens’ entitlement to be employed on terms similar to that of civil servants is limited by restrictions justified by considerations of 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 the position, unless the position is comprised by restrictions justified by regard for public order, public security and public health. The Guidance further stipu-

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125 Quotes from Employment in the Danish State Sector, the Agency for the Modernisation of Public Administration, November 2011, pp. 6 and 9. Cf. also Chapter 3.
126 Paras. 15.2.2.2 and 15.2.2.4.
127 Section 9.
128 Cf. also Employment in the Danish State Sector, the Agency for the Modernisation of Public Administration, November 2011, pp. 18-19.
lates that the rules on free movement do not apply to positions in the public sector. Further, the Guidance stipulates that the case law from the CJEU determines that Article 45 (4) applies only to posts involving exercise of public authority and responsibility for handling the general interests of the State or of other public authorities. Moreover, these criteria must be assessed on a case-by-case basis, taking into account the tasks and responsibilities covered by the post in question.\(^\text{129}\)

In a paragraph of the Guidance on Personnel Administration dealing with salary seniority, it is expressly stipulated that previous employment in other EU/EEA Member States shall be taken into account to the same extent as had it been employment in Denmark.\(^\text{130}\) This applies to Danish citizens and other EU/EEA citizens alike. Hence, the comparison of previous occupation must be performed on an objective and non-discriminatory basis, and without accounting for whether the previous employment was governed by the conditions for civil servants or collective agreements. In the guidelines reference is made to the principle on non-discrimination, the jurisprudence of the CJEU and the Communication from the Commission of December 2002.\(^\text{131}\)

The educational background must be documented in writing in the shape of exam diplomas or degree certificates. If - in exceptional situations - this is not possible, or if the procuring of such documentation involves disproportionate much inconvenience to the employee, the hiring authority may require the information substantiated by other means, such as the signing of a declaration on honour.

Furthermore, the previous employment must be substantiated in terms of the nature and extent of the employment. The hiring authority may accordingly require written documentation, e.g. in the shape of declarations from previous employers, but may also chose to base its assessment on a declaration on honour signed by the employee.\(^\text{132}\)

_Lønanciennitetscirkulæret ('Circular on Salary Seniority') lays down the detailed rules on determination of advantages._\(^\text{133}\)

Regarding grade (i.e. loyalty), _Cirkulære om jubilæumsgratiale til ansatte i staten_ ('Circular on Grade for Employees in the State') stipulates that a special bonus is paid by the employing authority to employees being employed within the State for 25, 40 or 50 years. The Circular apply to all State employees and do not comprise employment in the National Church or in self-governing institutions. However, within the seniority, employment within the State as well as the National Church is included. Further, employment in the public school prior to 1 April 1993 is counted in. In addition, employment in self-governing institutions after 1 April 2011 is included to the extent the person concerned has been comprised by the Ministry of Finance’s competence to determine or agree on salary and working conditions.\(^\text{134}\) According to the Guidance on Personnel Administration, grade is calculated from the first employment in the Danish State, and employment periods as a State employee in Greenland are included.\(^\text{135}\)

\(^{129}\) Paras. 15.2.1.4 and 15.2.2.4.

\(^{130}\) Para. 16.2.3.2.


\(^{132}\) Paras. 16.2.3.4 and 16.3.1.6.

\(^{133}\) Circular No. 6633 of 16 July 1987.

\(^{134}\) Circular No. 9111 of 15 April 2011. Cf. also the Guidance on Personnel Administration para. 16.4.

\(^{135}\) Para. 16.4.1.2.
2. **SOCIAL AND TAX ADVANTAGES**

2.1. **General situation as laid down in Article 7 (2) Regulation No. 492/11**

Social assistance to Danish citizens upon return from another Member State

Until 1 January 2012, Section 11 (3) of the *Act on Active Social Policy* made it a condition 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 was not fulfilled, the significantly lower amount of the so-called starting assistance (‘starthjælp’) would be paid out instead. The provisions on starting assistance and the residence requirement for entitlement to full social assistance were adopted in 2002. The purpose of the residence requirement and the reduced assistance that followed 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. 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.

It was not intended to make the residence requirement an obstacle to the free movement of EU citizens, as demonstrated by Section 11 (6) of the *Act on Active Social Policy*, according to which the requirement of 7 years of residence in Denmark did not apply to EU/EEA citizens insofar as they were entitled to cash benefits under EU law. The somewhat unclear scope of this exemption was clarified in the explanatory remarks to the amending Bill. Reference was here made to Regulation No. 1612/68 and the EEA Agreement, and the CJEU case law 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 did 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. Against this background, Section 11 (6) would seem to imply that Danish 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.

As described in previous annual reports, decisions from the National Social Appeals Board (‘Ankestyrelsen’) created doubts about the scope of this EU exemption, in particular regarding Danish citizens who had resided under the EU rules in another Member State and then moved back to Denmark. While the interpretation adopted by the Appeals Board was probably at variance with the legislative intentions behind the EU exemption in the *Act on Active Social Policy*, it also seemed unsustainable under EU law at least since the *Eind* judgment which established that upholding EU rights upon return to the Member State of...
origin is not contingent on the EU citizen’s renewed acquisition of the status of worker in that State.\textsuperscript{141}

Furthermore, the Appeals Board does not appear to have considered the principled issue of reverse discrimination as a separate problem under EU law as regards the interpretation and application of the aforementioned residence requirement in Danish legislation. The Appeals Board decisions also did not include any consideration of the possible impact of CJEU judgments in recent cases of relevance such as \textit{D’Hoop, Collins, Trojani, Eind or Vatsouras and Koupatantze}.\textsuperscript{142}

As the residence requirement was abolished as of 1 January 2012,\textsuperscript{143} the practices of the National Social Appeals Board shall not be described in further detail in this report. It should be noted, however, that the Parliamentary Ombudsman, on the basis of some complaints before him, in 2011 requested the Appeals Board and the Ministry of Employment to clarify the conformity of this practice with EU law, in particular Articles 20 and 21 TFEU and the relevant case law of the CJEU.\textsuperscript{144} The Ombudsman further asked the Appeals Board to explain the reasons for not having referred the pertinent EU law issues to the CJEU for preliminary ruling.\textsuperscript{145} Having received the responses from the Appeals Board and the Ministry of Employment,\textsuperscript{146} the Ombudsman yet again requested the Appeals Board and the Ministry of Employment to consider EU law issues in the light of the recent CJEU ruling in the \textit{Doris Reichel-Albert} case.\textsuperscript{147} As of 1 July 2013 no response to this additional request appears to have been submitted to the Ombudsman.

\textbf{Tax deduction for assistance in the home: The ‘Home Job Scheme’}

As described in last year’s report, an experimental scheme allowing for tax deduction of expenses to salary paid for assistance in permanent residences defrayed by persons being subject to unlimited tax liability in Denmark and frontier workers was adopted by Act No. 572 of 7 June 2011 amending i.a. the \textit{Tax Assessment Act}; the so-called Home Job Scheme.

\begin{itemize}
\item \textsuperscript{141} CJEU judgment of 11 December 2007 \textit{Eind} (C-291/05).
\item \textsuperscript{142} CJEU judgments of 11 July 2002 \textit{D’Hoop} (C-224/98), 23 March 2004 \textit{Collins} (C-138/02), 7 September 2004 \textit{Trojani} (C-456/02), 11 December 2007 \textit{Eind} (C-291/05), and 4 June 2009 \textit{Vatsouras and Koupatantze} (C-22/08 and C-23/08). No references to these judgments are to be found in the case law database of the National Social Appeals Board: \url{http://www.ast.dk/afoerelser/principalfoerelser/}, accessed 2 July 2013. Notably, in the Danish comments to the FMoW Report 2008-2009 (Memorandum of January 2010 from the Ministry of Employment, p. 4) the Appeals Board explained that “[t]he 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” while the Appeals Board has “not - on the basis of the information in the cases - found reason to involve these judgements in the grounds for the decisions”, and the Appeals Board has not in any of the published decisions “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”. This explanation, in itself raising an issue of compliance with procedural standards on reasoned administrative decisions, illustrates the fact that the Appeals Board has consistently and exclusively applied the criterion of acquired status of worker in Denmark, with little focus on the status held in the host Member State or other legal considerations that may be the basis of entitlements under EU law.
\item \textsuperscript{143} Act No. 1364 of 28 December 2011, amending the \textit{Act on Active Social Policy}.
\item \textsuperscript{144} Letter of 28 June 2011 from the Parliamentary Ombudsman to the National Social Appeals Board.
\item \textsuperscript{145} Letter of 28 June 2011 from the Parliamentary Ombudsman to the National Social Appeals Board.
\item \textsuperscript{146} Letter of 27 August 2012 from the National Social Appeals Board to the Parliamentary Ombudsman, enclosing letter of 29 June 2012 from the Ministry of Employment and a memorandum of 19 June 2012 from the National Labour Market Authority.
\item \textsuperscript{147} Letter of 4 October 2012 from the Parliamentary Ombudsman to the National Social Appeals Board, referring to the CJEU judgment of 19 July 2012 \textit{Doris Reichel-Albert v. Deutsche Rentenversicherung Nordbayern} (C-522/10).
\end{itemize}
According to the Danish Government’s Government Platform, this scheme – which was supposed to apply until 2013 – was to be abolished from 31 December 2011. Instead, a pool of subsidies for energy renovation was to be introduced on 1 January 2012. However, whilst adjusting the scheme, the Danish Government decided to maintain the scheme for 2012 – until 31 December 2012 – until the entry into force of the pool of subsidies for energy renovation on 1 January 2013. Furthermore, the scheme is currently in the process of being re-introduced (and also extended to comprise summer and holiday houses; see more below) with effect in 2013 and 2014 through a partial agreement on a Growth Plan for Denmark concluded in 2013 between the Government and 4 other parties seated in the Danish Parliament. Accordingly, in May 2013, the Minister of Taxation introduced a Bill to amend Ligningsloven (‘Tax Assessment Act’) etc. in line with the agreement.

Among other things, tax deduction of expenses to salary paid for assistance in permanent residences is conditional on the business performing the work being registered for VAT in Denmark or that the person performing certain tasks such as cleaning and gardening is subject to unlimited tax liability in Denmark.

With the purpose of allowing frontier workers the access to tax deduction, an exception applicable to frontier workers paying for assistance was adopted during the processing of the Bill in 2011. Pursuant to this, the above mentioned requirements are met when i.a. the work is performed by a business registered for VAT in another EU/EEA country and also when the person performing certain jobs is subject to unlimited tax liability in another EU/EEA country. This appears to be based on considerations on EU law on free movement of capital.

As indicated above, the scheme is being extended to persons owning summer and holiday houses by the Bill introduced in May 2013. Accordingly, tax deduction of expenses to salary for assistance in summer and holiday houses is allowed for residences situated in Denmark or abroad on more specified conditions. Among other things, tax relief is conditional on the person concerned being liable to taxation pursuant to Ejendomsværdiskatte- loven (‘Act on Property Value Tax’). For summer and holiday houses located in Denmark, tax deduction is conditional on the business performing the work being registered for VAT in Denmark or that the person performing certain tasks such as cleaning and gardening is subject to unlimited tax liability in Denmark. In contrast, for summer and holiday houses located abroad, there is no requirement on the work having to be performed by businesses being registered for VAT in Denmark or by persons being subject to unlimited tax liability in Denmark. This corresponds to the rules applicable to frontier workers with regard to permanent residences, as described above.

148 By Act No. 1382 of 28 December 2011, cf. explanatory remarks to Bill No. L 31/2011-12 of 21 November 2011, general remarks paras. 2.5 and 3.5 and specific remarks para. 1.5.
149 Aftale om mindsket grænsehandel, Boligjobordning og konkrete initiativer til øget vækst og beskæftigelse - delaftale om Vækstplan DK, 21 April 2013.
151 Tax Assessment Act Section 8V (2) (3).
152 Kildeskatteloven (‘Danish Withholding Tax Act’), Consolidation Act No. 1403 of 7 December 2010 Section 5B (1) (1).
155 Bill No. L 216, 2012/1 of 17 May 2013, general remarks paras. 3.1.2.2 and 10, and specific remarks to Section 1 (2) and (3) and 1 (8).
Furthermore, an exception has been proposed which allows frontier workers tax deduction for expenses to assistance on a foreign summer or holiday house although the frontier worker is not liable to taxation of the foreign summer or holiday house pursuant to the *Act on Property Value Tax*, provided the frontier worker would have been liable to taxation pursuant to the *Act on Property Value Tax* has the frontier worker been subject to unlimited tax liability in Denmark.\(^\text{156}\) These exceptions are based on considerations on EU law on free movement of capital.\(^\text{157}\)

According to the explanatory remarks to the Bill and the Minister of Taxation’s response to questions from Members of the Danish Parliament, an extension of the scheme to encompass only summer and holiday houses situated in Denmark, and a requirement on the work on summer and holiday houses situated in another EU/EEA country having to be performed by businesses being registered for VAT in Denmark or by persons being subject to unlimited tax liability in Denmark would be contrary to EU law on the free movement of capital, cf. *Jäger* (Case C-256/06).\(^\text{158}\)

As noted in last years’ report, apart from the exemption concerning frontier workers, the 2011-Bill was claimed to have no implications in terms of EU law.\(^\text{159}\) Likewise, apart from the exemption concerning frontier workers and the summer and holiday houses situated abroad, the 2013-Bill is claimed to have no implications in terms of EU law.\(^\text{160}\) Given the differential fiscal treatment of salary paid for assistance, raising issues on obstacles to free movement under Article 45 as well as Article 56 TFEU, this remains a rather questionable assumption.\(^\text{161}\)

On 27 June 2013, the Act was adopted by the Parliament. The Act enters into force the day after promulgation of the Act.

**Residence/employment requirement for receiving child benefit allowance and child benefits**

As described in last years’ report, by Act No. 1609 of 22 December 2010, entering into force on 1 January 2011 with more specified exceptions, the accumulation principle was introduced in relation to *child and young benefit allowance* and *child benefits*. Consequently, a requirement on *residence or employment for 2 years in Denmark within the past 10 years* in order to receive full benefits is imposed on all beneficiaries of child benefit allowance and child benefits pursuant to *Lov om børne- og ungeydelse* (*Act on Child- and Young Benefit Allowance*)\(^\text{162}\) and *Lov om børnetilskud og forskudsvis udbetaling af børnebidrag* (*Act on Child Benefit and Advance Payment of Child Support*).\(^\text{163}\) A proportionate part of the benefits may be paid under more specified circumstances when the residence/employment re-

\(^{156}\) Bill No. L 216, 2012/1 of 17 May 2013, specific remarks to Section 2.

\(^{157}\) Bill No. L 216, 2012/1 of 17 May 2013, general remarks para. 10 and Skatteudvalget 2012-13, L 216 endelig svar på spørgsmål 1, 2 og 3, 17 June 2013.

\(^{158}\) Explanatory remarks to Bill No. L 208, 2010/1 of 19 May 2011.

\(^{159}\) Bill No. L 216, 2012/1 of 17 May 2013, general remarks para. 10.

\(^{160}\) Cf. also Niels Gade-Jacobsen and Peter Nørgaard, ‘Fradrag for rengøringshjælp m.v. i hjemmet: sker der en EU-stridig forskelsbehandling af udenlandske tjenesteydere?’, *Tidsskrift for Skatter og Afgifter* 7/9 2011, TFS 2011, 702, finding Section 8V (2) (3) to be in contravention of EU rules on free movement; more specifically TFEU Article 56.

\(^{161}\) Consolidation Act No. 964 of 19 September 2011 Section 2 (1) (7).

\(^{162}\) Consolidation Act No. 856 of 23 August 2012 Section 5a (1).
quirement is not met.\textsuperscript{164} As noted in the previous reports, the conformity of the residence/employment criterion with case law of the CJEU is questionable.

Following the Commission’s enquiry to the Danish Government in April 2013 under the EU Pilot Project Case No. 4873/13/EMPL about the application of the accumulation principle in relation to child benefits etc., the Ministry of Taxation together with the Ministry of Social Affairs and Integration submitted a memorandum to i.a. the Parliament’s European Committee on the Government’s response to the Commission’s enquiry. Within the Memorandum, the Government declares its agreement with the Commission’s legal assessment of the specific application of the accumulation principle, entailing i.a. the accumulation principle to be in contravention of Regulation No. 883/2004 Article 6. Among other things, the Government emphasises the judgements of the CJEU in \textit{Bergström} (C-257/10) and \textit{Chassart} (C-619/11) and states that the previous application of the accumulation cannot be sustained. Consequently, the Government will institute an amendment of practice with regard to persons comprised by EU law and the introduction of a Bill in autumn 2013 with the purpose of ensuring full compliance of the Danish rules with EU law. Furthermore, with the purpose of the reopening of cases, under the circumstances the Danish authorities will identify cases within which the previous application of the accumulation principle resulted in persons being entitled to the benefits concerned not having been granted the benefits. Also, information on the possibility of the reopening of cases will be provided publically.\textsuperscript{165}

2.2. Specific issue: The situation of job seekers

Social assistance for job seekers

According to Section 12a of the \textit{Act on Active Social Policy},\textsuperscript{166} EU/EEA citizens residing in Denmark as first-time job seekers on the basis of EU 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 in 2004.\textsuperscript{167} According to the available information, the National Social Appeals Board has not examined any cases concerning Section 12a.\textsuperscript{168}

Section 3 (2) of the \textit{Act on Active Social Policy} makes it a precondition for entitlement to social assistance of longer duration - defined as more than half a year, cf. Section 3 (3) - that the recipient be either a Danish citizen or an EU citizen or a family member who has a right of residence under EU law, or have such entitlement under an international agreement.

Provided that these provisions are administered on the basis of a correct understanding of the EU rules on residence right, they should not give rise to violations of Articles 24 (2) or

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\textsuperscript{164} A report issued by the Ministry of Employment in 2011 deals with the possible application of an \textit{accumulation principle} in relation to the reception of app. 30 Danish welfare benefits: \textit{Rapport om Optjeningsprincippet for forhold til danske velfærdsydelser} by Udvalg om Udlændinges ret til velfærdsydelser, March 2011. In Chapter 3, the report accounts for EU law.

\textsuperscript{165} Europaudvalget 2012-2013, EEU Alm. del, Bilag 437. Cf. also press-release from the Ministry of Taxation of 18 June 2013, available in Danish at \url{http://www.skm.dk/presse/presse/pressemeddelelser/9648.html}.

\textsuperscript{166} Consolidation Act No. 190 of 24 February 2012.

\textsuperscript{167} Act No. 282 of 26 April 2004. Guidance on the new provision was issued by the National Directorate of Labour (’Arbejdssidirektoratet’) in Guidelines No. 33 of 4 May 2004. The transitional arrangements as well as their gradual abolishment were described in previous FMoW Reports (see also Chapter VII below).

\textsuperscript{168} Search result from the list of appeal cases examined by the National Social Appeals Board (’Ankestyrelsen’), available at \url{http://www.ast.dk/afoerelser/principalgoerelser/}, accessed 2 July 2013.
27 of Directive 2004/38/EC or Article 7 (2) of Regulation No. 1612/68. However, the impact of CJEU judgments such as Collins, Trojani, Ioannidis and Vatsouras and Koupatantze on the application of the Act on Active Social Policy has not yet been clarified by the National Social Appeals Board. In particular, the latter judgment would seem to limit the applicability of Section 12a of the Act to first-time job seekers in the strict sense of this notion.

EU-10 workers were reported to have 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 new jobs in Denmark. The social administration in some municipalities seem to have very precise information about EU citizens’ entitlement to social assistance and to administer the rules accordingly, whereas other municipalities apparently base their practice on an incorrect understanding of the rules, probably confusing the above-mentioned provision on first-time job seekers and the general rules concerning EU workers’ access to social assistance on equal terms with Danish citizens. The National Directorate of Labour ('Arbejdsoforlattet') suggested patience towards the municipalities, but stated its preparedness to consider the need for additional guidance on the applicable law.

More general guidelines concerning the right of EU/EEA citizens to cash benefits under the Act on Active Social Policy were issued by the National Directorate of Labour in April 2008. As the guidelines appear less than clear on various aspects of law, and they do not take heed of the abolishment of the transitional rules concerning EU-10 workers as well as the abolishment of the residence requirement in the Act on Active Social Policy, they should be expected to become updated.

**Assistance from municipal job centres**

As described above Chapters I.3 and III.1.1, the vast majority of the more than 400 requests for assistance in 2013 to the counselling and support offer for homeless and/or job seeking migrants in Copenhagen established by the relief organisation Kirkens Korshær are recorded to be about job seeking due to the fact that EU citizens in practice are reported not to be provided with assistance from the municipal job centres. Apparently, many of the migrants seeking the advice of Kompasset already requested the job centre for assistance at the counter of the job centre. However, the migrants were merely provided with a post card enumerating web addresses (among others www.workindenmark.dk) and were informed that they could use the computers for searches. The application of this procedure by a specific job centre has been confirmed by Kompasset’s manager and the employee themselves when inquiring the specific job centre for information on behalf of EU citizens. However, the extent of the application of this procedure, i.e. whether all job centres apply this procedure, is not known. In so far as job seeking EU citizens are not offered assistance by employment

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169 CJEU judgments of 23 March 2004 Collins (C-138/02), 7 September 2004 Trojani (C-456/02), 15 September 2005 Ioannidis (C-258/04), and 4 June 2009 Vatsouras and Koupatantze (C-22/08 and C-23/08).
170 Search result from the list of appeal cases examined by the National Social Appeals Board, available at [http://www.ast.dk/afgoerelser/principafgoerelser/](http://www.ast.dk/afgoerelser/principafgoerelser/), accessed 2 July 2013.
171 See 4 No. 17, weekly newsletter from the Danish Confederation of Trade Unions ('LO'), 11 May 2009.
173 In the Danish comments to the DK-Report 2008-2009 (Memorandum of January 2010 from the Ministry of Employment, p. 3) the National Labour Market Authority confirmed that the Guidelines would be updated in the near future. This does not appear to have occurred yet, cf. [https://www.retsinformation.dk/Forms/R0710.aspx?id=115636](https://www.retsinformation.dk/Forms/R0710.aspx?id=115636), accessed 3 July 2013.
174 Cf. e-mails of 7 and 19 June 2013 from an employee within Kompasset.
agencies corresponding to that offered to Danish nationals, this raises issues on unequal
treatment in access to employment.

Furthermore, as described above Chapter III.1.1 and in more detail below Chapter
VIII.3.2, EU citizens and their family members are comprised by certain parts of the Act on Integration, cf. Sections 2 (4) (8) and 2 (5). This means that EU citizens and their family
members residing in Denmark on the basis of the EU rules on free movement are entitled to
an introductory course offered by the municipalities pursuant to the Act Chapter 4a without
being issued with a registration certificate, recorded in the Civil Registration System etc.175
The introductory course comprises a Danish course, a course in Danish society, culture and
history and offers aiming at employment.176 Moreover, Section 24g provides the legal basis
for the municipalities to offer support to companies establishing a special advice function to
aliens residing on the basis of the EU rules on free movement (among others).

This means that also fist-time job seekers are entitled to such advice, courses and offers
aiming at employment. In practice, however, difficulties appear to occur in this regard; see
more below.

Legislation on being recorded in the National Register of Persons, being issued with a Civil
Registration System number and issued with a National Health Card

Sundhedsloven (‘Health Act’) and the corresponding Executive Order stipulate that persons
with residence in Denmark, in terms of being recorded in the National Register of Persons
and issued with a Civil Registration System number (CPR), are entitled to medical assis-
tance. Persons with a temporary stay and who do not reside in Denmark, have access to
emergency assistance, only. As a modification to this, stays of longer duration than 3 months
may be given equal status to residence in Denmark, when considered reasonable. Further, it
is stipulated that EU Regulations prevail over the Executive Order.177

A person may be recorded in the National Register of Persons and issued with a CPR as
a main rule only if the stay is to exceed 3 months; the person in question has a fixed abode or
residence in Denmark; and the person’s stay is legal. With regard to non-Nordic citizens, the
immigration authorities must have decided on the legality of the alien’s stay in Denmark
prior to recording in the National Register of Persons. Accordingly, if a person is issued with
a residence permit or certificate, he/she may be recorded. Consequently, an EU/EEA citizen
who is not issued with a registration certificate and who wishes to be recorded in the Regis-
ter, is referred to the Regional State Administration which is to decide on whether the EU
citizen qualifies for being issued with a registration certificate. Citizens of an EU/EEA coun-
try as well as of a Nordic country or Switzerland are not obliged to report their immigration
unless the stay exceeds 6 months.178 Once registered, a person is issued with a National
Health Card providing access to health benefits.

175 Cf. also Integrationsministeriets informationsbrev til kommunalbestyrelser og udbydere af danskuddannelse
for voksne udlændinge: Præcisering af regler om EU-borgeres ret til tilbud efter integrationsloven og dans-
kuddannelsesloven, Nr. 3/2011, Marts 2011, the Ministry of Refugees, immigration and Integration Affairs.
176 Cf. Section 24c and explanatory remarks to Bill No. L 149, 2010/1 of 23 February 2011, general remarks
para. 2.6.
177 Consolidation Act No. 913 of 13 July 2010 Sections 7-8 and Bekendtgørelse om ret til sygehusbehandling
m.v. (‘Executive Order on Entitlement to Hospital Treatment etc.’), Executive Order No. 1439 of 23 Decem-
ber 2012, Sections 1-7.
178 CPR-loven (‘CPR-Act’), Consolidation Act No. 5 of 9 January 2013 Chapter 5, Bekendtgørelse om folkereg-
istrering (‘Executive Order on National Register of Persons’), Executive Order No. 1153 of 23 November
Difficulties encountered in practice by job seeking EU citizens

In practice, job seeking EU citizens are reported to encounter great difficulties in Denmark with regard to the following issues:

• Many employers do not wish to employ the job seeking EU citizens before the EU citizens are provided with a CPR;
• the EU citizens cannot get a CPR before being employed (cf. above on the legislation on this);
• the EU citizens are encountering great difficulties in getting a bank account before being able to present a National Health Card. To self-employed, the requirements on documentation for getting a bank account are reported to include information such as business plan, list of clients, annual budget etc.;
• the EU citizens cannot get a National Health Card before having been paid their salary to a bank account, leaving them with money to rent a residence (cf. above on the legislation on this);
• in situations of i.a. temporary employment without a fixed number of working hours, the Regional State Administration is reported to require EU citizens to present 3 months’ payslips before issuing the registration certificate, and in some instances also a declaration from the employer stating that the employer will employ the EU citizen concerned for more than 3 months from the date of the declaration; and
• in practice it appears that some job centres require from the EU citizens to be issued with a CPR and hence recorded in the Civil Registration System before being entitled to courses, internships, employment with salary subsidy etc. pursuant to the Act on Integration, contrary to Danish legislation (see more below Chapter VIII.3.2 about this Act).
Chapter V
Other Obstacles to Free Movement of Workers

The concept of workers – seemingly lack of clarity on acquiring the status as a worker and application of guiding time-limits of minimum 10-12 weekly working hours and 10 weeks of employment

No major amendments appear to have been made to the authorities’ practice on the concept of workers in 2012-2013. For a detailed analysis of relevant legislation as well as practice, please see the Analytical Report on EU Workers on Temporary Contracts and Part-time Contracts, Denmark, 2012, where it is concluded that EU citizens on temporary and casual contracts do appear to encounter difficulties in being regarded as having acquired the status of EU workers due to the application of (guiding) time-limits of minimum 10-12 weekly working hours and 10 weeks’ duration of employment when determining upon the acquisition of the status of worker. The difficulties encountered seem to arise particularly in situations of a combination of temporary short-term employment below 3 months with part-time working hours – and when the EU citizen has been studying alongside with his/her work.180

As described in previous reports, for the purpose of his investigation and report issued in 2008, the Ombudsman asked the then Ministry of Refugee, Immigration and Integration Affairs to account for practice on the requirements on employment being real and genuine and not of a purely marginal character. The Ministry stated that it must be based on a concrete assessment of the specific circumstances of the case in question whether an EU citizen is considered a worker. The decisive question is whether the employment is real and genuine. Employment regarded as a marginal supplement is thus precluded from the scope of application. Consequently, it is usually a condition that the duration of employment is minimum 10-12 hours on a weekly basis. No lower limit for the duration of employment may be set.

Vejledning til statsforvaltningerne vedr. ophold efter EU-opholdsbekendtgørelsen (‘Guidance on Residence under the EU Residence Order to the Regional State Administration’), 2009, accounts for various practice from the CJEU on the concept of workers (Kempf (C-139/85), Megner og Scheffel (C-444/93), Genc (C-14/09) and Franca Ninni-Orasche (C-413/01)), and stipulates that on the basis of the judgment in Franca Ninni-Orasche (C-413/01) a guidance issued for the municipalities sets a time-limit for 10 weeks in relation to short-term employment. It is noted that the Regional State Administrations must regard this case as an example of a situation where employment of 10 weeks duration was deemed to suffice. It is emphasised, however, that a concrete and individual assessment must be performed in each case and that a person who has time-unlimited employment, but ceases work after less than 10 weeks may satisfy the conditions on being a worker pursuant to EU law, while a person who has been working for more than 10 weeks may not always meet the requirements, for instance because the employment is regarded of such limited extent that it appears as a purely marginal supplement. Based on a concrete assessment, fewer working

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180 Following the CJEU judgment in the L.N. case (C-46/12), practice regarding workers-students has been changed; see above Chapter VI.5.
hours and less salary may lead to the issuance of registration certificate when the employment is considered real and genuine.181

The Danish government presented a pleading for Genc (C-14/09) concerning the interpretation of Article 6 (1) of Decision No 1/80 of the EEC/Turkey Association Council in relation to a Turkish national whose professional activity was amounting to 5.5 hours per week. In its contribution, the government stated that as a clear rule, a minimum limit for the weekly working hours must apply, employment appearing as a merely marginal supplement is precluded from the scope of application of Article 6 (1), and employment of 5, 5 hours weekly as a clear rule had to be precluded from the scope of application.

From the notification to the Parliament of 27 April 2009, it appears that within the Danish Immigration Service, no information was available on decisions in which a residence- and work permit had been issued pursuant to Article 6 (1) on the basis of weekly working hours of less than 20 hours.182

In a decision that was appealed to the Danish Immigration Service regarding short-term employment of 5 weeks, the Regional State Administration decided on whether the EU citizen concerned acquired the status as a worker. In its reasoning, the Regional State Administration emphasised that the EU citizen did not have an income corresponding to the amount payable pursuant to the social welfare legislation – starting assistance.183 The Regional State Administration further found that the employment could not be considered real and genuine as the employment was of 5 weeks duration and also had such limited extent (10 weekly working hours) thus appearing as a purely marginal supplement. The Danish Immigration Service upheld the decision but not the reasoning as regards the assessment of the EU citizen’s income. The Danish Immigration Service thus found that upon performing a concrete and individual assessment of all the circumstances of the case, the EU citizen could not be considered a worker due to the time-limited employment for 5 weeks of 10 weekly working hours. The employment was thus not considered real and genuine.184

While far from all decisions on the concept of worker made by the Regional State Administrations and the Danish Immigration Service are published, leaving it less clear which criteria apply and how the concrete and individual assessment is conducted, it appears from the decisions made by the Danish Immigration Service that have been made publicly available that no persons not fulfilling the guiding minimum requirements have acquired the status as a worker in the Danish Immigration Service’s practice.185 Whether this is also the case as regards decisions made by the Regional State Administrations is not known, as such decisions are not published. However, a guidance to migrant workers drafted by the organisation Project UDENFOR in collaboration with various Danish authorities suggests that in practice some Regional State Administrations require the worker to substantiate earning an amount sufficient to support him-/herself implying a salary as a minimum corresponding to


Cf. Guidance No. 19 of 4 April 2008 para. 2.2.2 and Guidance No. 33 of 4 May 2004 para. 2.


183 Thus contrary to practice from the CJEU, such as Levin (C-53/81), CJEU judgment of 23 March 1982. As of 1 January 2012, starting assistance was abolished; see above Chapter IV.2.1.


185 Information obtained through search in the database of the Danish Immigration Service at http://www.nyidanmark.dk/da-dk/LegalInfo/SearchDecisions.htm?SearchType=legalinfo&Keywords=arbejdstager, accessed on 19 June 2013.
the Danish social assistance, and also impose minimum requirements on the number of working hours, which does not appear to be in accordance with practice from the CJEU, such as *Levin* (C-53/81).186

186 Cf. *Guide til migranter: Fra job til CPR*, Project UDENFOR in collaboration with SKAT (the Danish Tax Authority), the Regional State Administration, International Citizens’ Service and Copenhagen Citizen Service, Copenhagen 2012, p. 2. See also the FAQ at the website of the Regional State Administration stipulating that as a rule one must earn an amount at least corresponding to the level of the then starting assistance [http://www.statsforvaltningen.dk/site.aspx?p=4927](http://www.statsforvaltningen.dk/site.aspx?p=4927), accessed on 2 July 2013.
Chapter VI
Specific Issues

1. FRONTIER WORKERS

Tax issues - the Danish Withholding Tax Act Chapter IA

Kildeskatteloven (‘Danish Withholding Tax Act’) Chapter IA deals with frontier workers.\textsuperscript{187} The provisions have the purpose of enabling frontier workers, regardless of citizenship, with a possibility of obtaining tax relief similar to that of persons being unlimited tax liable, when the frontier workers earn the main part of their income in Denmark.

As a predominant rule, the salary of frontier workers working in Denmark is subject to taxation in Denmark, and upon the calculation of the German, Swedish or Norwegian tax, reduction is admitted in accordance with the relevant double taxation agreement in the country concerned.

Under special conditions, frontier workers may choose to be subject to taxation pursuant to Sections 5A - 5D, allowing the frontier worker taxation largely in a manner corresponding to that of a person being subject to unlimited tax liability.\textsuperscript{188}

Accordingly, as a frontier worker does not reside in Denmark, the rules on unlimited tax liability in the Danish Withholding Tax Act Section 1 do not comprise the worker. Instead, the rules as laid down in Section 2 on limited tax liability apply; rules that limit the access to tax relief. As a modification to this, Section 5A stipulates that provided the frontier worker earns at least 75\% of his/her global income in Denmark in the shape of payment for personal work or profit from performing business, he/she may choose access to deduction for expenses, cf. Sections 5B - 5C, i.e. tax relief, resulting in the frontier worker being in a position similar to a person being unlimited tax liable and thus comprised by Section 1.\textsuperscript{189}

As described above Chapter IV.2.1, exemptions applicable to frontier workers were respectively adopted in 2011 and proposed in 2013 with regard to the Home Job Scheme.\textsuperscript{190} Accordingly, with the purpose of allowing frontier workers the access to tax deduction, an exception applicable to frontier workers paying for assistance was adopted in the Danish Withholding Tax Act Section 5B (1) (1) in 2011. Pursuant to this - and as opposed to persons being unlimited tax liable - a frontier worker is allowed tax relief when i.a. the work is performed by a business registered for VAT in another EU/EEA country and also when the person performing certain jobs is subject to unlimited tax liability in another EU/EEA country. Furthermore, in the 2013-Bill an exception has been proposed which allows frontier workers tax deduction for expenses to assistance on a foreign summer or holiday house although the frontier worker is not liable to taxation of the foreign summer or holiday house pursuant to the Act on Property Value Tax, provided the frontier worker would have been liable to taxation pursuant to the Act on Property Value Tax had the frontier worker been

\textsuperscript{187} Consolidation Act No. 1403 of 7 December 2010. 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 Schumacker C-279/93 and Wielockx C-80/94. The rules took effect from the income year 1992.
\textsuperscript{188} Cf. Den juridiske vejledning 2013-1, SKAT, (‘Legal Guidance 2013-1’) para. C.1.7.
\textsuperscript{189} Cf. Legal Guidance 2013-1 para. C.F.5.
\textsuperscript{190} Respectively Act No. 572 of 7 June 2011 and Bill No. L 216, 2012/1 of 17 May 2013.
subject to unlimited tax liability in Denmark. These exceptions are based on considerations on EU law on free movement of capital.

*Practice from the National Tax Board on frontier workers’ access to tax deduction with regard to private salary insurance*

In a binding answer of 22 March 2011, the National Tax Board confirmed that a frontier worker residing in Sweden, primarily working in Denmark, without Swedish income, being a member of a Danish unemployment insurance fund and socially secured in Denmark, was able to deduct expenses defrayed of private salary insurance taken out in Sweden in the enquirer’s Danish income.

*Tax issues - the Tax Assessment Act Sections 33 and 33A*

In addition, the *Tax Assessment Act* Sections 33 and 33A provide for reduction with tax paid abroad/salary earned abroad of tax being calculated in Denmark.

Pursuant to Section 33, a person being taxable in Denmark who paid tax abroad of an income earned abroad are entitled to reduction of the tax paid in Denmark of the foreign income under more specified circumstances.

Pursuant to Section 33A, a person who is comprised by the *Danish Withholding Tax Act* Section 1, and thus is subject to unlimited tax liability, may obtain a reduction of his/her tax of taxable salary corresponding to the part of the Danish tax proportionally relating to the foreign income, when the person concerned stays abroad for a minimum of 6 months, without staying in Denmark for more than a total of 42 days under more specified circumstances. Section 33A applies to employed persons who are employed for or stationed for work abroad. Furthermore, stays on board ships recorded in the Danish International Shipping Register is considered stay abroad.

In practice, Section 33A has been construed in a manner allowing for frontier workers to fall under the provision, regardless of the fact that they are subject to limited tax liability pursuant to the *Danish Withholding Tax Act* Section 2. Consequently, frontier workers may fall under the *Danish Withholding Tax Act* Sections 5A - 5D, as well as under the *Tax Assessment Act* Section 33A.

By Act No. 921 of 18 September 2012, Section 33A was repealed. However, due to criticism raised by the Danish business community, Section 33A was later reintroduced by Act No. 1395 of 25 December 2012.
Danish courses - the Act on Danish Courses for Adult Aliens et al.

As described above Chapter III.3 EU/EEA frontier workers are entitled to attend Danish courses on terms equal to those issued with a residence permit and residing in Denmark.\textsuperscript{198} Danish courses are cost-free for all aliens comprised by the Act.\textsuperscript{199} In addition, cost-free ‘intro-Danish’, i.e. Danish courses aiming at the Danish labour market for aliens above 18 residing in Denmark on a more temporary basis with the purpose of employment or frontier workers is available. The offer of Intro-Danish applies to all aliens with ordinary employment, continuous lawful residence and a right to take up employment in Denmark.\textsuperscript{200}

Residence clauses

The \textit{EU Residence Order} Section 7 (1) (iii) read in connection with Section 20, implements Directive 2004/38/EC Article 17 (1) (c) on the right to permanent residence for persons no longer working in the host Member State.\textsuperscript{201} Section 7 (1) (iii), cf. Section 7 (1), stipulates 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 returns, as a rule, at least once a week, has a right to residence for more than the 3 months pursuant to \textit{Aliens Act} Section 2 (1), provided the EU citizen has had business activity and resided in Denmark continuously for at least the previous 3 years.

As mentioned above Chapter I on Article 17, Section 7 (3) stipulates 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).\textsuperscript{202}

Regarding the compatibility of the residence requirement in Section 7 (1) (iii) with \textit{Hartmann} (C-212/05), the then Ministry of Refugee, Immigration and Integration Affairs in 2010 stated that \textit{Hartmann} does not concern the issue of permanent residence. Thus, the Ministry had the view that the provision is not against the ruling in \textit{Hartmann}. In more detail regarding \textit{Hartmann}, the Ministry stated that the case concerns issues on social security under Regulation No. 1612/68 which, according to the Ministry, do not apply directly to the rules on rights of residence of EU citizens and their family members under Directive 2004/38/EC. The Ministry further stated that frontier workers residing in Denmark and working in their home country are considered persons of sufficient resources in terms of Directive 2004/38/EC. As a justification of this, the Ministry referred to COM (2009) 313, p. 4.\textsuperscript{203}

\begin{itemize}
\item \textsuperscript{198} Cf. the \textit{Act on Danish Courses for Adult Aliens et al} Section 2a. The provision was adopted by Act No. 485 of 12 June 2009, described in detail in the 2009-2010 report. See also Guidance No. 9242 of 21 June 2011, para. 2.2.5.
\item \textsuperscript{199} Cf. Section 14. The provision was adopted by Act No. 485 of 12 June 2009, described in detail in the 2009-2010 report.
\item \textsuperscript{200} Cf. Section 16b, adopted by Act No. 1512 of 27 December 2009, described in detail in the 2009-2010 report. See also Guidance No. 9242 of 21 June 2011, para. 7.
\item \textsuperscript{201} See above Chapter I.
\item \textsuperscript{202} Section 20 states that persons with a right of residence in Denmark under Section i.a. 7 have a right to permanent residence without satisfying further conditions.
\item \textsuperscript{203} Cf. email of 11 May 2010 from an official within the Ministry of Refugee, Immigration and Integration Affairs.
\end{itemize}
Registration certificates

Pursuant to the Guidance on Residence under the EU Residence Order to the Regional State Administration para. II.1.3, EU citizens who are commuters are not obliged to register pursuant to Aliens Act Section 2 (1). Further, a requirement on leaving Denmark at least once a week may not be imposed. At the most, a requirement on departure at least once every 3 months may be imposed, as a new 3 months period begins each time the EU citizens enters Denmark upon staying at his/her residence in another EU country.

Residence rights - family reunification

Pursuant to the Guidance on Residence under the EU Residence Order to the Regional State Administration para. I.2.14, when for instance a German citizen takes up residence in Denmark and works in Germany, the German citizen is considered a person of sufficient resources in terms of Directive 2004/38/EC. Thus, the German citizen will achieve the right to family reunification under the EU rules. Furthermore, when a German citizen takes up work in Denmark and resides in Germany, the German citizen does not have access to family reunification in Denmark due to the fact that the German citizen does not reside in Denmark.

2. SPORTSMEN/SPORTSWOMEN

According to information obtained from the Ministry of Culture in 2013, the concept of home grown players is of relevance only with regard to football.204

Football

Nationality quotas

According to information obtained from the Ministry of Culture in 2013, no changes have been made to this area since 18 May 2010.205

As described in detail in the previous reports, the rules on the Danish Football Association (‘Dansk Boldspil-Union’, DBU),206 a member of the Sports Confederation of Denmark (‘Danmarks Idræts-Forbund’, DIF),207 Fédération Internationale de Football Association (FIFA)208 and the Union des Associations Européennes de Football (UEFA)209 and under the competence of the Court of Arbitration for Sport (CAS)210 and the International Football Association Board (IFAB), do not contain nationality quotas generally applicable to players with citizenship from countries within Europe. However, in 2009 the DBU adopted rules on home-grown players covering only the best Danish football league; the Super or the SAS league. According to the DBU and the DIF, the concept of home grown players is in accordance with UEFA’s rules on participation in the Champions League and the new Europe

204 Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
205 Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
206 Official website www.dbu.dk.
207 Official website www.dif.dk.
League, and thus, similar to the international concept of home grown players. Consequently, in an official first team of 25 players, DBU’s rules require the clubs in the Super league to have a minimum of 8 home grown players of which at least 4 players have been educated in the club and the additional up to 4 players have been educated in another Danish club. In this connection, ‘educated’ refers to the player having been entitled to play for the club for a minimum of 36 months in total during the age of 15 to 21. In situations where a club is not able to meet the requirement on the number of home grown players, the number of players on the first team is reduced correspondingly with the number of missing 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.

Special rules apply to international matches. Regarding players with citizenship from countries outside of Europe, nationality quotas are applied.

Transfer fees

According to information obtained from the Ministry of Culture in 2013, no changes have been made to this area since 18 May 2010.

According to the rules on the Danish Football Association, FIFA’s Regulations for the Status and Transfer of Players apply regarding training compensation. In the event of transfer between Danish clubs, there is no requirement on payment of training compensation.

As for solidarity contribution, DBU also refers to FIFA’s Regulations on the Status and Transfer of Players, 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.

Volleyball

Nationality quotas

According to information obtained from the Ministry of Culture in 2013, no changes have been made to this area since 18 May 2010.

As described in detail in the previous reports, the rules on the Danish Volleyball Federation (‘Dansk Volleyball Forbund’, DVBF), a member of the Sports Confederation of Denmark (‘Danmarks Idræts-Forbund’, DIF), the International Volleyball Federation (FIVB) and the International Volleyball Federation’s European Volleyball Confederation

211 Cf. e-mail of 10 June 2013 from an official within the Ministry of Culture within which an official within the DIF states that Danish football follows the rules of UEFA.
213 Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
214 Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
216 Official website www.dif.dk.
DENMARK

(CEV),\textsuperscript{218} do not seem to contain nationality quotas. However, DVBF imposes a 2 year \textit{residence requirement} 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 and alien players simultaneously on court. However, DVBR does not seem to have implemented the regulations of FIVB on limitation of the number of players from other national federations simultaneously on court.

\textit{Transfer fees}

According to information obtained from the Ministry of Culture in 2013, no changes have been made to this area since 18 May 2010.\textsuperscript{219}

As described in detail in the previous reports, the Danish Volleyball Federation is subject to FIVB’s rules on transfer. 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.

\textbf{Handball}

\textit{Nationality quotas}

According to information obtained from the Ministry of Culture in 2013, no changes have been made to this area since 18 May 2010.\textsuperscript{220}

As described in detail in the previous reports, the rules on Danish Handball Federation (‘Dansk Håndbold Forbund’, DHF),\textsuperscript{221} a member of the Sports Confederation of Denmark (‘Danmarks Idræts-Forbund’, DIF),\textsuperscript{222} the International Handball Federation (IHF),\textsuperscript{223} the European Handball Federation (EHF)\textsuperscript{224} and the Scandinavian Handball Federation (‘Skandinavisk Håndbold Forbund’, SkHF) do not contain nationality quotas. However, DHF is subject to the regulations of the federations, and DHF as well as the international federations are on a regular basis contemplating to adopt regulations limiting the number of alien players in Danish Handball. According to information previously obtained from the Ministry of Culture, DHF is aware of the limitations for such regulations following the EU rules on free movement.\textsuperscript{225}

\textit{Transfer fees}

According to information obtained from the Ministry of Culture in 2013, the Danish Handball Federation introduced a local Danish rule entailing that all players, regardless of nationality, may become entitled to play immediately if the Danish club, within which the player is employed, significantly violates the player contract or go bankrupt. However, the player

\textsuperscript{218} Official website \url{www.cev.lu}.
\textsuperscript{219} Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
\textsuperscript{220} Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
\textsuperscript{221} Official website \url{www.dhf.dk}.
\textsuperscript{222} Official website \url{www.dif.dk}.
\textsuperscript{223} Official website \url{www.ihf.info}.
\textsuperscript{224} Official website \url{www.eurohandball.com}.
\textsuperscript{225} Cf. e-mail of 30 June 2008 from an official within the Ministry of Culture.
must be entitled to play for the new club at the latest four rounds prior to the beginning of the playoff games.\textsuperscript{226}

The Danish Handball Federation is subject to the rules of IHF and EHF on transfer and applies \textit{education compensation}.

The \textit{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).

\textbf{Basketball}

\textit{Nationality quotas}

As described in detail in the previous reports, the rules on Denmark’s Basketball Federation, a member of the Sports Confederation of Denmark (‘Danmarks Idræts-Forbund’, DIF)\textsuperscript{227} and the International Basketball Federation (FIBA Europe),\textsuperscript{228} 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.

According to information obtained from the Ministry of Culture in 2013, (‘Danmarks Basketball-Forbund’, DBBF),\textsuperscript{229} has no limitations for EU citizens in the Danish basketball league. However, each club within the best rank may apply only two Americans, while the number is limited to one American in other ranks.\textsuperscript{230}

\textit{Transfer fees}

According to information obtained from the Ministry of Culture in 2013, no changes have been made to this area since 18 May 2010.\textsuperscript{231}

As described in detail in the previous reports, transfer fees are not applied in Danish basketball. However, on 13 June 2009, DBBF adopted rules on young players, prescribing a \textit{compensation sum} to be paid to the club of origin when the young talent plays in the best series later on. 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.

\begin{itemize}
  \item \textsuperscript{226} Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
  \item \textsuperscript{227} Official website \url{www.dif.dk}.
  \item \textsuperscript{228} Official website \url{www.fibaeurope.com}.
  \item \textsuperscript{229} Official website \url{www.danmarksbasketballforbund.basket.dk}.
  \item \textsuperscript{230} Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
  \item \textsuperscript{231} Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
\end{itemize}
**Ice-hockey**

*Nationality quotas*

No changes appear to have been made to this area since last years’ reporting. The rules on Denmark’s Ice-Hockey Association (‘Danmarks Ishockey Union’, DIU),\(^232\) a member of the Sports Confederation of Denmark (‘Danmarks Idræts-Forbund’, DIF)\(^233\) and the International Ice Hockey Federation (IIHF),\(^234\) do contain nationality quotas, as a club at any time is allowed to have 8 players on contract who do not hold Danish citizenship. In this context, the concept of players on contract comprises players on try-out and players playing on the club’s first team without having entered into a contract with the club.\(^235\)

*Transfer fees*

No changes appear to have been made to this area since last years’ reporting. As described in detail in the previous reports, Denmark’s Ice-Hockey Association is subject to the rules on transfer of IIHF. Moreover, a fee of approximately 1,000 Euro (8,250 DKK) must be paid for the issuance of the transfer card. Out of these, DKK 5,000 is paid to IIHF and the remaining fee is an administrative fee covering the processing of the case.\(^236\)

**Rugby and Water polo**

*Nationality quotas and transfer fees*

According to the most recent membership statement from 2012, Danish Rugby Association (‘Dansk Rugby Union’)\(^237\) has 2,178 members.\(^238\) According to the most recent membership statement from 2012, Water polo, Danish Swim Association (‘Dansk Svømmeunion’),\(^239\) has 1,586 members.\(^240\)

The associations’ number of members makes the associations amongst the smallest sporting areas of the DIF and their activities are solely performed on an amateur basis. Thus, neither nationality quotas nor transfer fees exist in Danish rugby or in Danish water polo.\(^241\)

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\(^{232}\) Official website [www.ishockey.dk](http://www.ishockey.dk).

\(^{233}\) Official website [www.dif.dk](http://www.dif.dk).

\(^{234}\) Official website [www.iihf.com](http://www.iihf.com).

\(^{235}\) Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.

\(^{236}\) Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.

\(^{237}\) Official website [www.rugby.dk](http://www.rugby.dk).

\(^{238}\) Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.

\(^{239}\) Official website [www.svoem.dk](http://www.svoem.dk).

\(^{240}\) Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.

\(^{241}\) Cf. e-mail of 7 June 2013 from an official within the Ministry of Culture.
3. **THE MARITIME SECTOR**

**Introduction**

For a detailed description of employment and working conditions in the maritime sector, please see Thematic Report on Seafarers of August 2011, Denmark.

As described in previous reports, *DIS-loven* (‘Act on the Danish International Shipping Register’) Section 10 (2) on the applicability of collective agreements on wages and working conditions for employees on board ships recorded in the DIS, concluded by Danish and foreign trade unions, was amended by Act No. 214 of 24 March 2009, entering into force on 1 April 2009. Section 10 (2) was amended in order to render the compliance of the Danish legislation with EU law visible and to rule out any possible doubt on the compliance with EU law as well as to close the infringement case initiated by the Commission in 2004. The Bill does not aim at additionally changing the existing state of law. In 2012-2013, no amendments were made to the Act.

**Residence criterion - the Act on the Danish International Shipping Register**

Regarding pay and general working conditions for seafarers in particular, the applicability of collective agreements concluded by Danish and foreign trade unions is determined by the *Act on the Danish International Shipping Register* Chapter 3, named ‘Wages and working conditions’. While issues on taxation, social security, health and safety at work etc. are governed by legislation, Chapter 3 of the Act forms the basis of the collective agreements governing other issues based on a *residence criterion* – such as wages:

According to Section 10 (1):

‘Collective agreements on wages and working conditions for employees on board ships in this register must explicitly indicate that such agreements apply only to such employment.’

According to Section 10 (2):

‘Collective agreements as mentioned in subsection 1 concluded by a Danish trade union can only cover persons having residence in Denmark, or who must be put on the same footing as persons considered having residence in Denmark pursuant to EU law or other concluded international obligations.’

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242 Consolidation Act No. 273 of 11 April 1997. The register is usually referred to as the ‘DIS’.
243 Bill No. L 83/2008-09 of 3 December 2008, general remarks paras. 1 and 6 and specific remarks to Section 1. Cf. also the Minister of Economic and Business Affairs’ replies to question 1–4 from members of the Danish Parliament, available [http://www.ft.dk/samling/20081/lovforslag/L83/spm/dok](http://www.ft.dk/samling/20081/lovforslag/L83/spm/dok), and the hearing note from the Ministry of Economic and Business Affairs paras. 2.2, 2.3, 2.4 and 2.5, available at [http://www.ft.dk/samling/20081/lovforslag/l83/bilag/1/index.htm#nav](http://www.ft.dk/samling/20081/lovforslag/l83/bilag/1/index.htm#nav), both accessed on 24 June 2013.
244 According to Section 3 (1) of the *Act on the Danish International Shipping Register*, a ship recorded in the DIS is entitled to fly the flag of Denmark and is subject to Danish law.
245 Author’s translation of Section 10.
246 This provision does not apply to passenger ships primarily sailing between Danish harbours and other harbours within a more specified area within the North Sea and the English Channel, cf. the *Act on the Danish International Shipping Register* Section 3 (2), adopted by Act No. 460 of 31 May 2000.
According to Section 10 (3):\(^{248}\)

‘Collective agreements as mentioned in subsection 1 concluded by a foreign trade union can cover only persons being members of the organization concerned, or persons who are citizens of the country within which the trade union is based in so far as the persons are not members of another organization with which an agreement as mentioned in subsection 1 has been concluded.’

According to Section 10 (4):

‘The Act on the Industrial Court\(^{249}\) applies also in cases where a foreign trade union acts as a party.’

**Appeal of High Court ruling of 18 March 2011 to the Supreme Court**

As described in detail in previous reports, the High Court found in its ruling that 2 Polish seafarers whose salary was lower than that following from the collective agreements concluded by a Danish trade union had not been subject to discrimination on grounds of nationality contrary to EU law. Furthermore, the High Court found that the *Act on the Danish International Shipping Register* Section 10 (2) provided for a statutory differential treatment of workers within the EU, and that the residence criterion in Section 10 (2) was substantiated by creditable, general considerations, which as the point of departure had to be considered objectively and reasoned substantiated, and hence Section 10 (2) was not void.\(^{250}\)

Subsequently, the trade unions 3F and LO (bringing the action against the Ministry on behalf of the 2 Polish seafarers) contemplated on whether the case should be appealed to the Supreme Court, or alternatively whether the organizations should ask the Commission to investigate the case. The LO later decided to appeal the High Court’s ruling of 18 March 2011 to the Supreme Court. In its appeal, the LO petitioned for the Supreme Court to submit to the CJEU for a preliminary ruling 4 questions regarding the compatibility of the Danish rules on seafarers with EU free movement law, and on 20 March 2012, the Supreme Court ruled on the matter. In its ruling, the Supreme Court refused to submit the questions to the CJEU, as the Court found there to be no doubt on the interpretation of TFEU Article 45 and Regulation No. 492/2011 Article 11 in relation to the case dealt with before the Supreme Court. The Court thus found there to be no requirement for submission of the questions to the CJEU for a preliminary ruling. Following this ruling, the LO withdrew the case.

4. **RESEARCHERS/ARTISTS**

**Residence rights**

As described in previous reports, according to information previously obtained from the Ministry of Employment, no rules on the interpretation of the concept of worker apply specifically to researchers and artists. Hence, the general rules requiring such cases to be dealt

\(^{248}\) This provision does not apply to passenger ships primarily sailing between Danish harbours and other harbours within a more specified area within the North Sea and the English Channel, cf. the *Act on the Danish International Shipping Register* Section 3 (2), adopted by Act No. 460 of 31 May 2000.

\(^{249}\) Act No. 106 of 26 February 2008.

\(^{250}\) Case No. B-2931-08 (unpublished), Eastern High Court judgment of 18 May 2011.
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 CJEU, the Danish Immigration Service states that no lower limit for the duration of employment may be set.251

4.1.  Artists

Taxation of artists

Artists are subject to taxation under the same rules as other persons, but the division and categorisation of types of income in practice appear to cause difficulties to artists, regardless of nationality, in terms of i.a. precluding tax deduction or affecting unemployment benefits and sickness benefits.252

Specifically with regard to the income of performing artists, this is subject to taxation in the country within which the activity is performed pursuant to most double taxation agreements.253

To foreign artists staying on a temporary basis in Denmark, the decisive criteria with regard to taxation of their fee – and also to VAT – are respectively whether there is an employment relationship between the artist and the Danish employer, and whether the artist is permanently established in Denmark and hence self-employed: 254

A) Employment relationship with a Danish employer: Foreign artists and soloists not residing in Denmark are in general not subject to taxation of fees received in Denmark due to the fact that they often are not in an employment relationship with a Danish employer. However, if the persons concerned become subject to unlimited tax liability after 6 months’ stay, the persons will be subject to Danish taxation of their fees.

When foreign artists not residing in Denmark are in fact in an employment relationship with a Danish employer, and the work is performed in Denmark, the foreign artists are subject to Danish taxation under the rules on limited tax liability laid down in the Danish Withholding Tax Act Section 2 from day one.255 This is having the effect that artists may apply the rules on frontier workers laid down in the Danish Withholding Tax Act Sections 5A-D when otherwise meeting the requirements of those provisions. As described above Chapter VI.1, Sections 5A-D allow tax relief to the frontier worker comprised by Section 2, resulting in the frontier worker being in a position similar to a person being unlimited tax liable under Section 1 in terms of taxation. However, a prerequisite for the artist accessing the frontier

251 Cf. also Guidance on Residence under the EU Residence Order to the Regional State Administration, para.I.1.1.1, referring to CJEU judgment of 6 November 2003 Franca Ninni-Orasche (C-413/01) on short-term employment of 10 weeks duration.
worker scheme on deduction of expenses - and hence to be put on equal footing with persons being subject to unlimited tax liability - is that the artist earns at least 75% of his/her global income in Denmark in the shape of payment for personal work or profit from performing business.

B) Permanently established in Denmark: Foreign artists are subject to Danish taxation under the rules on limited tax liability laid down in the Danish Withholding Tax Act Section 2 when the foreign artists reside abroad and are permanently established in Denmark and hence considered self-employed. Furthermore, (foreign) artists being self-employed must register for VAT in Denmark when the artists’ revenue exceeds certain amounts laid down in Momsloven (‘Act on VAT’)256 Chapter 12 (DKK 50,000 or 300,000).257

Consequently, an artist residing abroad, having an atelier or workshop or the like in Denmark of a more permanent nature and staying in Denmark for shorter periods of time, is considered to be permanently established in Denmark and self-employed. Accordingly, the artist is subject to taxation in Denmark of the net income ascribed to the atelier or workshop in Denmark under the rules of limited tax liability.258

However, with regard to an artist whose Danish tax obligation has ceased but who establishes a gallery in his/her summerhouse in Denmark, having the status of an all-year residence, and whose stays in Denmark involve the safeguarding of his/her income, such an artist’s Danish tax obligation will resume once the artist establish a place of sale in Denmark in his/her summerhouse.259 This regardless of the fact that the summerhouse as per dispensation may be used only 6 months a year and the fact that the artist is a resident in another Member State. Consequently, the artist becomes subject to unlimited tax liability in Denmark under the Danish Withholding Tax Act Section 1, having the consequence that not only the income ascribed to the place of sale in Denmark, but also income arising from the artist’s country of residence is subject to taxation in Denmark.260

Language requirements applied with regard to work scholarships for artists

As described in detail above Chapter III.1.2, in 2012 the Board of Equal Treatment ruled in a case regarding a Danish language requirement imposed on a writer being a Danish citizen of Uzbekistan origin as a prerequisite for being awarded with a work scholarship for artists by a foundation having the responsibility of awarding public means for the purpose of promoting Danish creative art. The Board found that the Danish language requirement to the book’s manuscript constituted indirect discrimination on grounds of ethnic origin, as the requirement was found not to be appropriate or necessary for achieving the purpose of the foundation to promote Danish creative art.

As a result of the approach from the complainant’s mentor, the foundation decided to alter the interpretation of Danish art, resulting in Danish literature to be interpreted as literature

259 Cf. the Danish Withholding Tax Act Section 7.
260 Cf. SKM2006.212.SR. See also DK-Report 2010-2011 Chapter V regarding the rather restrictive interpretation of ‘having residence at one’s disposal in Denmark’ with regard to summerhouses, where i.a. practice entailing the fact that the formal status of a summerhouse (i.e. a person is entitled to reside in the summerhouse all year) is emphasized rather than the actual status of the summerhouse (i.e. the summerhouse is not suitable for living in all year) is described.
written in Danish and literature written by authors residing in Denmark, who publish in Danish and who have a significant impact on Danish literature and culture.\textsuperscript{261}

4.2. Researchers

Taxation of researchers

As described in previous reports, the Danish Withholding Tax Act Sections 48E and 48F lay down a special scheme on taxation for key employees and researchers recruited abroad and employed in a Danish business or research institute. The scheme applies to all line of businesses and to all persons, regardless of nationality, and has the purpose of improving the possibilities of attracting foreign experts to Denmark for tasks lasting for more than 3 years.\textsuperscript{262} Special rules apply to researchers whose qualifications have been recognized by a public research institute or a research committee, as they are exempt from the otherwise general requirement on a specific size of the fee (a monthly average of DKK 69,300 in 2013 after certain deductions).

The provisions provide for an optional 26 \% gross taxation for up to 60 months for persons who become subject to limited or unlimited tax liability pursuant to the Danish Withholding Tax Act Section 1 or 2, respectively when commencing the employment relationship. For applying the scheme, it is a prerequisite i.a. that the person within the past 10 years prior to the employment has not been subject to unlimited tax liability or has not been subject to limited tax liability in Denmark on more specified conditions.\textsuperscript{263}

5. ACCESS TO STUDY GRANTS

Outline of developments

In 2013, 3 major developments occurred with regard to study grants awarded to EU citizens:

1) In February 2013, the Danish Agency for Higher Education and Educational Support informed of the fact that previous cases resulting in refusal of study grants on grounds of the EU citizen not having consecutive registered stay in Denmark, or on grounds of a spouse or registered partner not being a spouse of an EU citizen being a worker or self-employed in Denmark may be reopened; see more below.

2) In June 2013, the Danish Agency for Higher Education and Educational Support informed of the fact that cases resulting in refusal of study grants to EU citizens engaged in real and genuine employment of a minimum of 10-12 weekly working hours or being self-employed may be reopened. Furthermore, the applications on study grants suspended since January 2012 during the CJEU’s processing of the L.N. case (C-46/12) will now be processed by the Agency; see more below.

3) In September 2013, the Danish government informed the Danish Parliament’s European Committee that as it is the assessment of the Danish government that the 2-out-of-the-past-10-years’ residence criterion for study grants for study programmes abroad cannot

\textsuperscript{261} Decision No. 217/2012, made on 8 February 2012.
\textsuperscript{263} Cf. Legal Guidance 2013-1 paras. C.1.10 and C.F.6.1.
stand alone following the CJEU judgments in *Commission v. Kingdom of the Netherlands* (C-542/09), *Giersch* (C-20/12) and joint cases *Prinz and Seeberger* (C-523/11 and C-585/11). Accordingly, the government plans to introduce a bill during the next parliamentary session, laying down additional affiliation criteria, such as family members, school, work and financial ties; supplementing the 2 years’ residence criterion - and based on the CJEU’s suggestions to the Member States in the abovementioned judgments. Moreover, cases resulting in refusal of study grants due to the 2 years’ residence criterion may be reopened and dealt with according to the new affiliation criteria; see more below.

**EU citizens’ access to maintenance aid**

As described in detail in the DK-Report 2010-2011, *Danish nationality* is a prerequisite for the award of the State educational support, for studies in Denmark as well as for studies abroad. As for students not being Danish citizens, these may, however, be given a status equal to that of Danish citizens on conditions following from either the Danish rules or EU law.

As for EU/EEA citizens and their family members encompassed by the EU rules, EU/EEA citizens and their family members may be given a status equal to that of Danish citizens on conditions following from the EU rules; i.a. when being or having been a worker or self-employed (on more specified conditions) or certain family members thereto. Yet, as regards the rules applicable to the *child of a worker*, the compatibility of the definition of child of the worker with the CJEU interpretation of Regulation No. 492/11 remains questionable, as concluded by the Network in previous reports.

Consequently, 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.

*Residence in Denmark for a period of at least 2 consecutive years within the last 10 years* prior to the reception of the application is a prerequisite for the award of the State educational support for *study programmes abroad*, regardless of the student’s nationality. Exceptions apply to certain schools in Flensburg and Schleswig and to students not registered as departed in the Civil Registration System (in situations where the student has been living with his/her parents abroad as a consequence of the parents being stationed for the Danish State).

In last years’ reporting, the CJEU judgment in *Commission v. Netherlands* (C-542/09) was expected to be likely to affect the Danish scheme on study grants for study programmes abroad, also due to the Ministry of Science, Innovation and Higher Education’s statements regarding the advocate general’s motion for judgement in the Ministry’s Memorandum for the Parliament’s European Committee on *Commission v. Netherlands* (C-542/09), as de-

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265 Cf. *SU-loven* (‘Act on Study Grants’), Consolidation Act No. 661 of 29 June 2009 Section 2 (1) (1), referring to Section 2a (1).
267 Cf. *Act on Study Grants* Section 2a (2) – (3) and *Executive Order on Study Grants* Section 67 and [http://www.su.dk/English/Sider/eulaw.aspx](http://www.su.dk/English/Sider/eulaw.aspx), accessed on 27 June 2013.
268 Cf. *Act on Study Grants* Section 2 (3) and [http://www.su.dk/English/Sider/studiesabroad.aspx](http://www.su.dk/English/Sider/studiesabroad.aspx), accessed on 27 June 2013.
scribed in last years’ report.\(^{269}\) It its Memorandum, the Ministry hence stated that the purpose of the residence requirement as laid down in the Danish provision, i.e. to ensure that the State educational grant for study programmes abroad will be awarded to students who have achieved an affiliation to Denmark, only,\(^{270}\) is similar to that of the residence requirement as laid down in the Dutch provisions on study grants, and that the advocate general did not find this very same objective to be justified in the *Commission v. Netherlands* (C-542/09).\(^{271}\)

Thus, on 12 September 2013, the Danish government informed the Danish Parliament’s European Committee that as it is the assessment of the Danish government that the 2-out-of-the-past-10-years’ residence criterion cannot stand alone, following the CJEU judgments in *Commission v. Kingdom of the Netherlands* (C-542/09), *Giersch* (C-20/12) and joint cases *Prinz and Seeberger* (C-523/11 and C-585/11),\(^{272}\) the government plans to introduce a bill during the next parliamentary session, laying down additional affiliation criteria, such as family members, school, work and financial ties; supplementing the 2 years’ residence criterion – and based on the CJEU’s suggestions to the Member States in the abovementioned judgments.\(^{273}\)

Moreover, cases resulting in refusal of study grants due to the 2 years’ residence criterion may be reopened and dealt with according to the new affiliation criteria. It is the assessment of the Danish government, that within the past 3 years, study grants were refused in approximately 250 cases on grounds of the 2 years’ residence criteria. Furthermore, in up to 50 of those cases, study grants must be awarded based on the new affiliation criteria.

Reopening of cases with refusals on grounds of not having consecutive registered stay, or on grounds of not being a spouse of a worker or self-employed EU citizen

In February 2013, the Danish Agency for Higher Education and Educational Support informed of the fact that cases resulting in refusal of study grants on grounds of the EU citizen not having *consecutive registered stay* in Denmark may be reopened. The background of the reopening of the cases is the Danish Ombudsman’s investigation on his own initiative of the practice of the Board of Appeal for Danish Educational Support, launched in 2008 and finalized in April 2010, as described in detail in the DK-Report 2010-2011, where also the institutional issues between the various authorities are described. As a result of his investigation,


\(^{270}\) For a detailed description of this provision, please the DK-Report 2010-2011.

\(^{271}\) In ‘EU-domstolens seneste domme’ by Jacob Waage and Ninna Holst-Christensen, *EU-ret & Menneskeret*, Vol. 19, No. 4, 2012, pp. 166ff, the authors state that it might be considered whether the Danish residence requirement may live up to the test on proportionality due to the fact that the Danish residence requirement is less extensive time wise than the Dutch residence requirement. A different view is taken by Henrik Skovgaard-Petersen in ‘Uddannelsesstøtten i EU-retligt perspektiv – Studiejob eller statsborgerskab?’, *Juristen*, No. 2, April 2013, pp. 81ff, as the author argues that proportionality – or the time wise intensity – was not the decisive criterion to the CJEU in *Commission v. Netherlands*. Rather, the decisive criterion was the fact that the Dutch provision was considered to be too general and too excluding due to the fact that the provision not to a sufficient extent was targeted against promoting the mobility of those students least inclined to leave the Netherlands; cf. p. 87 on the social objective of the Dutch provision; i.e. promoting the mobility of students otherwise inclined to remain in the Netherlands to study. The author further notes i.a. that the requirements imposed on the Netherlands with regard to the burden of proof was rather strict, and carefully concludes that Denmark must be extremely well-prepared for meeting the burden of proof in order to be able to sustain the Danish affiliation/residence criterion based on the social objective.

\(^{272}\) CJEU judgments of respectively 14 June 2012, 20 June 2013 and 18 July 2013.

\(^{273}\) Redegørelse, Konsekvenserne af EU-domme om ret til uddannelser i udlandet, 12 September 2013, Europaudvalget 2012-13, EEU Alm. del, Bilag 561.
the Ombudsman found that i.a. the educational authorities’ interpretation of the concept of consecutive stay was not uniform, and that the authorities emphasized the formal circumstances rather than the substantive facts in certain instances.

Accordingly, the Agency informed of the fact that according to the applicable interpretation of consecutive stay, emphasis may be put only on the EU citizen’s consecutive legal stay in Denmark; meaning the period of substantiated stay in Denmark rather than what might be possible to get registered by the National Register of Persons or and/or by the immigration authorities.

Furthermore, the Agency informed of the fact that cases resulting in refusals on grounds of not being a spouse to an EU citizen who is a worker or self-employed may also be reopened. This is likewise based on the Ombudsman’s investigation finalized in 2010 within which he raised doubts as to whether it was examined by the educational authorities if Danish citizens made use of their rights to free movement across borders, entitling spouses and registered partners to be awarded with Danish study grants pursuant to EU law under more specified circumstances.274

**Reopening of cases with refusals on grounds of not being a worker or self-employed**

In June 2013, the Danish Agency for Higher Education and Educational Support informed of the fact that cases resulting in refusal of study grants to EU citizens engaged in real and genuine employment of a minimum of 10-12 weekly working hours or being self-employed may be reopened, provided the EU citizen concerned apply for reopening at 31 December 2013 at the latest. Furthermore, the applications on study grants suspended since January 2012 during the CJEU’s processing of the L.N. case (C-46/12) will now be processed by the Agency.275 The background of the reopening of cases and the processing of suspended cases, respectively, is the CJEU’s ruling in the L.N. case (C-46/12) of 21 February 2013. In the case, the Board of Appeal for State Educational Support submitted a request for a preliminary ruling to the CJEU of whether Articles 7 (1) (c) and 24 (2) of Directive 2004/38/EC must be interpreted as meaning that a European Union citizen who pursues a course of studies in a host Member State whilst at the same time being in employment may be refused maintenance aid for studies granted to the nationals of that Member State where he entered the territory of that State with the principal intention of pursuing a course of study; as described in last years’ report, where also the course of events is described.276

Accordingly, the Agency informed of the fact that - as opposed to previous practice - EU citizens entering into Denmark with the main purpose of studying are entitled to study grants if they at the same time acquired the status of worker under EU law.

In order to be regarded a worker (or self-employed or a person retaining such status) with genuine and effective employment, the EU citizen as a rule must have had a minimum of 10-
12 weekly working hours (see more below Chapter V on this minimum requirement) and this must be substantiated. Thus, ‘[…] for example an employment contract or pay slips for the whole period […]’ must be submitted along with the application form. While acknowledging the fact that pay slips are mentioned merely as an example of documentation, and the fact that the documentation is not required for the purpose of issuing registration certificates, it appears rather unfortunate for the Agency for Higher Education and Educational Support to mention documents that cannot be required from workers as proof of their status in connection with the issuance of registration certificates without violating Directive 2004/38/EC Article 8 (3), as this may leave EU citizens with the impression that pay slips are required as proof of their status.

As described above Chapter I.3, as a consequence of the CJEU judgment in the L.N. case the Danish government, along with 4 other parties seated in the Danish Parliament, entered into an agreement entailing the systematic, automatic and monthly control of non-national EU students receiving study grants in Denmark on the basis of their status of workers. Accordingly, an administration being provided with input from the eIncome registry and automatically controlling whether the EU/EEA citizens concerned retain their status of workers has been established. For persons whose income does not appear from the eIncome registry, a separate control procedure has been established.

Although this control system has not been established for the purpose of determining the residence rights of EU citizens, but rather to verify that EU citizens are eligible to be regarded as a worker when being awarded with study grants, the establishing of an automatic, systematic and monthly control system of the extent of workers’ employment activities appear to raise issues on incompatibility with Article 14 (2) on retention of the right to residence. This is caused by the fact that albeit Member States may verify if conditions set out in Articles 7, 12 and 13 on right of residence are fulfilled in specific cases where there is reasonable doubt as to whether the conditions are satisfied; such verification shall not be carried out systematically.

6. YOUNG WORKERS

Labour market terms and migration procedures

The Danish labour market terms of employment and salaries are generally governed by collective agreements reached by trade unions and employer associations or individual contracts rather than by legislation. Employers hiring an employee not being a member of the union the employer has reached an agreement with, must offer the employee employment under conditions comparable to those of the other employees hired by the employer. However, several labour market laws stipulate minimum requirements. The Danish legislation on protection of young workers on the labour market makes a distinction between young workers encompassed by compulsory education and young workers not comprised by compulsory education. The legislation on protection of young workers on the Danish labour market as

278 Cf. also the principles of Article 25.
280 Cf. above Chapter IV.
described in the analytical note of August 2010 do not seem to cause obstacles to the free movement of young workers.

Yet, pursuant to migration procedures, additional requirements on documentation seem to be imposed on minors. Thus, according to the *Guidance on Residence under the EU Residence to the Regional State Administration* para. I.1.1.3, EU citizens who are minors and who wish to be issued with a registration certificate as a worker (as opposed to as a family member) must present proof of / information must be obtained on

- the nature of the work
- with whom the EU citizen will reside during the stay in Denmark
- statement of income and expenses in connection with private accommodation
- original declaration of consent from the person(s) having parental rights and responsibilities.

**Initiatives directed at young unemployed persons and social assistance reform**

Various initiatives directed at young unemployed persons have been launched through recent years in Denmark, and in June 2013 two Bills providing for a social assistance reform were adopted.

Some of the main elements of the reform are:

- Young persons below 30 years of age without an education are granted educational assistance of a level similar to that of study grants, as opposed to being granted social assistance;
- all young persons without an education are provided with an education order. For young persons who are able to commence an education, the education order means that they must commence an education as soon as possible. For young persons who do not have the qualifications for commencing an education, the education order means that they must be available to efforts directed towards education; and
- citizens above 30 years of age and young persons with an education who can work are met with requirements on intensive job seeking during the first 3 months. After this, they are met with requirements on earning one’s social security in so-called ‘jobs of use’ (*nyttejob*).

**Sporting sector - home grown players and training or education compensation**

Please see above Chapter VI.2 on sportsmen/sportswomen from where it appears that within certain areas of the Danish sporting sector, the concepts of home grown players and training or education compensation are applied. Most likely, the application within Danish football of the concept of home grown players in particular may de facto cause obstacles to the free movement of young sportspersons. It should be noted, however, that the consequence for not meeting the requirement on 8 home grown players does not seem to be of a severe nature for

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283 [http://bm.dk/da/Beskaeftigelsesomraadet/Flere%20%20arbejde/Kontanthjelpsreform.aspx](http://bm.dk/da/Beskaeftigelsesomraadet/Flere%20%20arbejde/Kontanthjelpsreform.aspx) and [http://bm.dk/da/Aktuelt/Pressemeddelelser/Arkiv/2013/06/Bredt%20politis%20fertal%20%20vedtag%20kontanthjelpsreformen.aspx](http://bm.dk/da/Aktuelt/Pressemeddelelser/Arkiv/2013/06/Bredt%20politis%20fertal%20%20vedtag%20kontanthjelpsreformen.aspx), both accessed on 2 July 2013.
the club in question. This is due to the fact that the number of players on the first team, normally consisting of 25 players, is reduced correspondingly with the number of missing home grown players.
Chapter VII
Application of Transitional Measures

1. TRANSITIONAL MEASURES IMPOSED ON EU-8 MEMBER STATES BY EU-15 MEMBER STATES AND SITUATION IN MALTA AND CYPRUS

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

2. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM BULGARIA AND ROMANIA

See above Section 1.

3. TRANSITIONAL MEASURES IMPOSED ON WORKERS FROM CROATIA

On 2 May 2013 the Parliament adopted *Lov om Den Europæiske Unions udvidelse med Kroatien* (‘Act on the Enlargement of the EU with Croatia’). According to the explanatory remarks, the Government considered it unnecessary for Denmark to implement the transitional measures that would be permissible under the Accession Treaty with Croatia. In particular, this assessment was based on the limited potential for emigration from Croatia, given the size of its population. The Danish labour market organisations shared this assessment, and the Government drew the attention to the possibility to introduce transitional measures at a later stage in case of serious disturbance or risk of such disturbance within a specific geographic area or branch of the labour market.

284 Bill No. L 141/2008-09.
285 Act No. 313 of 28 April 2009, amending the *Aliens Act*.
286 Act No. 459 of 8 May 2013.
287 Bill No. L 134/2012-13, general remarks para. 4.4. The Minister of European Affairs confirmed this view in his response of 11 April 2013 to the Parliament Committee of European Affairs (question no. 2 on Bill No. L 134/2012-13).
Chapter VIII
Miscellaneous

1. RELATIONSHIP BETWEEN REGULATION NO. 883/04 AND ARTICLE 45 TFEU AND REGULATION NO. 492/2011

Both principled and practical aspects of the interaction of Regulation No. 883/2004 - as well as, for the period until 1 May 2010, Regulation No. 1408/71 - and Danish social security and social welfare legislation seem to come increasingly into focus at various administrative levels, not least as far as the delimitation of social security benefits covered by the Regulation is concerned. As described in previous annual reports, the National Social Appeals Board (‘Ankestyrelsen’) has clarified the impact of Regulation No. 1408/71 in a number of important decisions in recent years.

Since the application of these Regulations on the coordination of social security does not really fall within the scope of the FMoW report, no detailed analysis or further update of this case law will be included in this version of the report.

As an illustration of the delimitation between Regulation No. 1612/68 and Regulation No. 1408/71 reference could be made to one of the cases concerning social assistance to Danish citizens upon return from another Member State (see Chapter IV.2.1 for a general account). Here the National Social Appeals Board noted that Regulation No. 1408/71 does not apply to questions concerning social assistance under the Act on Active Social Policy, as this cash benefit does not belong to the category of social security covered by the Regulation. Since the applicant in this case was not considered to have acquired the status of worker upon return to Denmark, she was found not to be entitled to full social assistance in accordance with the EU exemption from the residence requirement, but only to the reduced starting assistance. While the Appeals Board’s reasoning here again was based on the problematic criterion of acquired status of worker subsequent to the return to Denmark, the result may seem more appropriate in this particular case due to the fact that the applicant had been a long-distance student at a Danish university, in receipt of Danish study grants, during her residence in another Member State. The more general impact of EU citizenship in connection with such residence was not considered, however, as the Appeals Board only focused on the possible status of worker under Regulation No. 1612/68.


There appear to be no major developments in this area in 2012-2013 as compared to last years’ reporting.

As mentioned above Chapter VI.1, the then Ministry of Refugee, Immigration and Integration Affairs stated in 2010 that Hartmann (C-212/05) concerns issues on social security under the (then) Regulation No. 1612/68 which, according to the Ministry, do not apply directly to the rules on rights of residence of EU citizens and their family members under Directive 2004/38/EC. The Ministry further stated that frontier workers residing in Denmark

288 National Social Appeals Board, decision of 24 September 2009, reported in No. 207-09.
and working in their home country are considered to be persons of sufficient resources in terms of Directive 2004/38/EC. As a justification of this, the Ministry referred to COM (2009) 313, p. 4. 289

3. **EXISTING POLICIES, LEGISLATION AND PRACTICES OF A GENERAL NATURE THAT HAVE A CLEAR IMPACT ON FREE MOVEMENT OF EU WORKERS**

3.1. **Efforts against social dumping and illegal work**

As accounted for in last years’ report, the Danish Government together with the Red-Green Alliance has a distinct and declared aim of targeting social dumping and/or illegal work. Accordingly, a number of initiatives and acts aim at enhancing the efforts against moonlighting, illegal work, social fraud and social dumping, and a cross-ministerial Committee for Counteracting Social Dumping to assess the possibility of adopting additional initiatives to counteract social dumping was established.

The measures adopted and accounted for in last years’ report include measures such as the requirement to carry and to present valid ID imposed on workers, coordinated control actions performed jointly by the Police, the Danish Working Environment Authority and the Danish Tax Authority, the tax authorities’ direct access to the outdoor areas of private property when outdoor activities of a professional nature visibly take place, the requirement on workmen’s cars to be provided with identification, the requirement on signposting at constructions sites and the establishment of a hotline facilitating anonymous reporting on foreign companies.

In October 2012, the Committee for Counteracting Social Dumping issued its report. 290 The report accounts for Danish national legislation as well as EU law in various areas affected, and also for experiences from other EU and EEA countries. The report identifies a number of possible initiatives for further political consideration, and a number of non-possible initiatives. Following this, the political parties agreed on the launching of additional initiatives for fighting social dumping in November 2012. 291 Among other things, this agreement aims at strengthening the RUT-register (Register for Foreign Service Providers) i.a. by authorizing the Danish Working Environment Authority to issue administrative fines to foreign service providers not complying with the duty to register and to enhance the control with foreign service providers. Furthermore, the deadline for reporting changes in working place etc. is to be reduced from 8 to 3 days, and the increased use of work provisos is to be ensured in public construction and facility procurement. Moreover, enhanced efforts against illegal cabotage and improved information on the Danish labour market and the Danish collective agreements are to be ensured. Also, it will be examined whether imposing a requirement on ID cards with or without safety education on persons working at construction sites is desirable. Regarding the latter, the Ministry of Employment is responsible for conducting the analysis in this regard and must submit its report in September 2013. Imposing a requirement on ID card and safety education on employees at construction sites in the shape previously suggested by construction parties is one of the initiatives the Committee for

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289 Cf. email of 11 May 2010 from an official within the Ministry of Refugee, Immigration and Integration Affairs.
290 Rapport fra Udvalget om modvirkning af social dumping, 27 October 2012.
Counteracting Social Dumping identified as a non-possible initiative, as the Committee assessed such requirement to violate EU law. However, while referring to Norway’s experiences with introducing a special ID card in the construction business, the Committee also stated that the introduction of such specific requirement in Denmark may be considered.

The measures adopted since last years’ report (cf. above Chapters I.3, III.1.2, V and IV.1) on the basis of the political agreement of November 2012 include measures applicable to foreign service providers, such as

- more information required from foreign service providers in the RUT-register;
- the possibility of giving public access to certain information about foreign service providers (more information is required from foreign service providers than from Danish service providers) with the purpose of strengthening the trade union’s possibilities of ensuring enforcement of the conditions of the Danish labour market;
- the reduction of the deadline for foreign service providers for reporting changes from 8 days to the next weekday; and
- authorising the Danish Working Environment Authority to issue administrative fines to foreign service providers not meeting the requirements.

Furthermore, measures applicable to workers have been introduced, namely

- the reduction of tax relief on travel expenses;
- the taxation in Denmark under the rules on limited tax liability of hiring-out of labour when foreign workers with a foreign employer perform work that are an integrated part of the work of a Danish business (this does not apply to performing artists, musicians, performers or sportspersons); and
- the taxation in Denmark under the rules on limited tax liability of foreign workers’ income from work performed in Denmark for a foreign business when the workers stay in Denmark for one or more periods of a total of 183 days within a 12 months’ period.

In addition, Act No. 595 of 12 June 2013, entering into force on 1 July 2013, aims at implementing Directive 2008/104/EC on temporary agency work. The Act provides for temporary agency workers to be covered by collective agreements entered into by the user business when the temporary worker performs work falling within the scope of the collective agreement, or by collective agreements entered into by the temporary employment agency. Accordingly, the Minister of Employment states in her reply to a question from a member of

295 The Danish Government presented a plea in Case C-53/13 regarding a request for a preliminary ruling on whether Articles 56 and 57 prevent national rules requiring a business hiring labour from a business based in another Member State (the supplier) to withhold and pay income tax for the workers, when the obligation to withhold and pay tax is otherwise imposed on suppliers based in the Member State concerned. According to the Danish Ministry of Taxation, the ruling of the case is of importance to the Danish rules on taxation in Denmark of the hiring-out of labour, cf. Notat til Folketingets Europaudvalg og Folketingets Skatteudvalg om afgivelse af indlæg i EU-Domstolens sag C-53/13 Strojírny Prostějov, a.s. mod Odvolací finanční ředitelství, Europaudvalget 2012-13, EUU Alm.del Bilag 401, 17 May 2013.
296 Act on Amendment of the Tax Assessment Act, the Withholding of Tax Act and the Act on Income Tax, Act No. 921 of 18 September 2012, cf. Bill No. L 195, 2011/1. Also, taxation in Denmark of the foreign income of persons who are fully liable to pay tax in Denmark was introduced by the repeal of the Withholding of Tax Act Section 33A. However, this provision was later re-introduced; see more above Chapter VI.1.
the Danish Parliament that the Act lays down a principle of equal treatment of temporary workers with the user business’ own employees, and also that the Minister further expects more temporary employment agencies to enter into collective agreements and hence that the possibility of running temporary agency business with salaries below the typical Danish level is circumscribed.  

3.2. Integration measures

EU citizens and their family members are encompassed by certain parts of the Act on Integration, cf. Sections 2 (4) (8) and 2 (5). This means that EU citizens and their family members residing in Denmark on the basis of the EU rules on free movement are entitled to an introductory course offered by the municipalities pursuant to the Act Chapter 4a. The introductory course comprises a Danish course, a course in Danish society, culture and history and offers aiming at employment.

Moreover, Section 24g provides the legal basis for the municipalities to offer support to companies establishing a special advice function to aliens residing on the basis of the EU rules on free movement (among others).

As described in previous reports, the Act on Danish Courses for Adult Aliens and the Act on Integration were amended in 2011, clarifying EU citizens’ entitlement to Danish courses and introductory courses on the basis of presenting evidence of the status as a worker etc. pursuant to the EU rules, as opposed to the previous requirements on presentation of registration certificate and being recorded in the Civil Registration System. Consequently, the explanatory remarks specifically refer to Directive 2004/38/EC Article 25 as the basis for the amendment. According, EU citizens and their family members encompassed by EU free movement law must be offered Danish courses etc. also prior to being recorded in the Civil Registration System, issued with registration certificates etc.

This means that also fist-time job seekers are entitled to such courses and offers aiming at employment. Contrary to this, however, in practice it appears that some job centres require from the EU citizens to be issued with a CPR and hence recorded in the Civil Registration System before being entitled to courses, internships, employment with salary subsidy etc., as described above Chapters III.1.1 and IV.2.2, which is not in accordance with neither Danish legislation, nor Directive 2004/38/EC Article 25.

3.3. Immigration policies for third-country nationals and the Union preference principle

There appear to be no major developments in this area in 2012-2013 as compared to last years’ reporting.

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299 Cf. Section 24e and explanatory remarks to Bill No. L 149, 2010/1 of 23 February 2011, general remarks para. 2.6.
300 Explanatory remarks to Bill No. L 149, 2010/1 of 23 February 2011, general remarks paras. 2.6, 3.4, and 8 and specific remarks paras. 1.3, 1.5 and 2.1.
301 Cf. also Integrationsministeriets informationsbrev til kommunalbestyrelser og udbydere af danskuddannelse for voksne udlanders: Præcisering af regler om EU-børgeres ret til tilbud efter integrationsloven og danskuddannelsesloven, Nr. 3/2011, Marts 2011, the Ministry of Refugees, immigration and Integration Affairs.
302 Cf. e-mail of 19 June 2013 from an Employee within Kirkens Korshær, Kompasset.
In Danish immigration legislation, there is a distinction between ordinary employment and highly qualified employment when deciding on the issue of residence permits for third-country nationals on the basis of employment.

Ordinary employment is characterized by the fact that the work may as well be performed by Danish or alien workers residing in Denmark or workers from the EU/EEA as by third-country nationals not residing in Denmark. In connection with applications on residence permits on the basis of employment, the Danish immigration authorities consult the regional councils on employment in case of doubt on whether there is available and qualified labour in Denmark and the EU/EEA countries within the professional area concerned. The occupational and commercial evaluation forms the basis of the processing of the case by the then Ministry of Refugee, Immigration and Integration Affairs. For the issue of residence permits on the basis of employment, it is a condition that the work is of such special nature that the issue of residence permit is recommended. In general, residence permits are not issued for third-country nationals on the basis of unskilled work or ordinary skilled work.

As for highly-qualified employment, various schemes in *Aliens Act* Section 9a, such as the green card scheme, the positive list, the pay limit scheme and the corporate residence permit, ease the access for third-country nationals in obtaining residence permits on the basis of employment. When issuing residence permits on the basis of highly qualified employment, the Danish immigration authorities do not consult the regional councils on employment on whether there is available labour in the EU/EEA countries within the area concerned. Yet, the Danish authorities consider the Union preference principle as being complied with. The reasoning behind this view is the fact that EU citizens may enter and work without restrictions, whereas third-country nationals are subject to additional requirements, both administratively and materially.\(^{303}\)

It might be questioned whether the Union preference principle can be considered as being complied with solely on the basis of requirements imposed on third-country nationals.

### 3.4. Return of nationals to new EU Member States

In recent years, there has been some debate in Denmark regarding the return to serve their sentences in their home countries of namely Eastern European citizens convicted of crime in Denmark. Accordingly, a number of the political parties seated in the Parliament submitted 2 separate proposals in 2012 to a Parliamentary decision on the Danish Government entering into agreements on measures to ensure serving of sentences in home countries etc.; apparently inspired by the Norwegian agreements and measures established in this regard. The proposals were both rejected by the Danish Parliament.\(^{304}\)

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\(^{303}\) Cf. email of 28 May 2010 from an official within the Ministry of Employment.

4. NATIONAL ORGANIZATIONS OR NON-JUDICIAL BODIES TO WHICH COMPLAINTS FOR VIOLATION OF COMMUNITY LAW CAN BE LAUNCHED

4.1. Complaint bodies

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 general State bodies competent to deal with legal disputes, such as the courts, the sector specific complaint bodies, the administrative bodies and the Ombudsman. In order to ensure the safeguard of EU law, it is thus a precondition that those bodies observe and apply EU Law.

The Ombudsman appears to play an increasingly vital role in enforcement of EU law in Denmark by i.a. the launching of investigations of his own initiative as described in the past years’ report and above Chapters V and VI.5. As described above Chapter VI.5, the reopening of cases regarding refusals on grounds of not having consecutive registered stay, or on grounds of not being a spouse of a worker or self-employed EU citizen is thus a direct consequence of the Ombudsman’s investigation on his own initiative of the practice of the Board of Appeal for Danish Educational Support, launched in 2008 and finalized in April 2010.

The background for the reopening of cases regarding refusals on grounds of not being a worker or self-employed is less clear due to the course of events; namely being the results of the Ombudsman’s investigation, the institutional issues between the various authorities, the Ombudsman subsequently submitting a question concerning the assessment of an EU/EEA citizen’s status to the European Ombudsman and the Board of Appeal for Danish Educational Support later submitting a question to the CJEU for a preliminary ruling in the L.N. case (C-46/12), resulting in the Ombudsman suspending his investigation.305 However, while the reopening of the cases concerned undoubtedly is a direct consequence of the CJEU judgment in the L.N. case, it also seems rather safe to assume that the Ombudsman at least rendered the issue visible.

Also, the Board of Equal Treatment plays a role in ensuring the enforcement of legislation on equal treatment, including EU equal treatment law. Accordingly, the Board interprets Danish legislation in light of Directives 2000/43/EC and 2000/78/EC, as described above Chapter III.1.2.306

However, with regard to EU free movement law, the Board apparently does not consider the EU rules on free movement of workers to be encompassed by the competence of the Board,307 which gives rise to concern.

305 In the article ‘Dugfrisk SU-dom på mudret baggrund,’ by Catherine Jacqueson, WELMA, Copenhagen University, 28 February 2013, Jyllands Posten, the author states that the ruling of the CJEU is no surprise in terms of EU law. What is interesting, however, according to the author, is i.a. the fact that the question was submitted to the CJEU while a number of pending cases illegally were suspended by the relevant authorities. The author further states i.a. that it is interesting to note the fact that the Danish Ombudsman was prevented from moving on with the matter once the case was brought before the CJEU by the Board.
306 Cf. i.a. the ruling No. 217/2012.
307 Cf. the rulings No. 74/2010 and 75/2010 of 17 September 2010, as described in last years’ report Chapter IV.1.
4.2. **Associations or organizations acting on behalf of, and in support of, EU migrant workers**

Pursuant to *Forvaltningsloven* (‘Public Administration Act’) a party to a case being processed by the public administration may as a rule at any stage choose a party representative or allow him-/herself to be assisted by others.308

**Trade unions**

As appear from the cases described above Chapters IV.1 and VI.3, trade unions may and do represent migrant workers in cases regarding working conditions and EU free movement law. Namely in the appeal of High Court ruling of 18 March 2011 to the Supreme Court, as described in detail above Chapter VI.3, the trade union LO invoked EU free movement law and petitioned for the Supreme Court to submit to the CJEU for a preliminary ruling questions regarding the compatibility of the Danish rules on seafarers with EU free movement law. However, the Supreme Court refused to submit the questions to the CJEU.

**Kompasset – legal and social counselling offer for homeless migrants, including those being job seeking**

As described above Chapters I.3, III.1.1 and IV.2.2, the private and social relief organisation affiliated to the National Church *Kirkens Korshær* established a counselling offer for homeless migrants, including those being job seeking, *Kompasset*.309 The purpose of *Kompasset* is to offer legal and social counselling and support to the increasing number of homeless migrants in Copenhagen, and thereby to reduce their downfall. This is based on the experience of *Kirkens Korshær*, apparently proving that many migrants find it extremely difficult to navigate in the Danish society, namely in terms of access to the labour market and health benefits. The target group of *Kompasset* is homeless migrants who are not registered in Denmark in terms of Civil Registration System (CPR) or alien’s number and who hence do not have access to assistance from the public authorities. *Kompasset* further offers independent guidance for job seeking migrants specifically by i.a. a guidance on the Danish registration system and a letter of information to employers. In October 2012, the target group was comprised mainly by EU/EEA citizens, namely East Europeans. Since January 2013, *Kompasset* recorded more than 400 requests for assistance; the majority apparently from job seeking EU citizens.310

**Project OUTSIDE – active street work, training and research**

Project *UDENFOR* (‘OUTSIDE’) is a ‘[...] private foundation combining active social street work with training and research in approaches to homelessness and social marginalisation.’311 The organisation i.a. runs various projects focussing on homeless migrants,312 previously ran

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308 Consolidation Act No. 988 of 9 October 2012 Section 8.
310 Cf. e-mails of 7 and 19 June 2013 from an employee within *Kompasset*.
312 See [http://udenfor.dk/dk/menu/udeliggerprojekter](http://udenfor.dk/dk/menu/udeliggerprojekter), accessed on 29 June 2013.
a theme on undocumented, homeless migrants, held a seminar in 2012 about homeless EU citizens in Denmark, publish reports about its work, and issued a guidance to homeless migrants about the Danish system of registration. In 2012, the organisation published a report according to which the vast majority of at least 500 homeless migrants in Copenhagen are EU citizens. Furthermore, 4 out of 5 are migrant workers whose biggest problems are poverty, unemployment and homelessness.

Grace, Blå Kors – cafe for socially exposed persons with particular focus on foreigners

Cafe Grace, run by the social, Christian organisation Blå Kors, offers i.a. Danish courses (and future English courses), assistance in writing CVs and in job seeking and assistance for returning to one’s home country (business plan, counselling etc.).

Legal aid – free legal counselling

The various legal aid organisations established may also offer free counselling to EU citizens and their family members following the circumstances.

5. LEGISLATION, LITERATURE AND REPORTS

Main Acts


317 Rapport om hjemløse migranter i København, Del 1 og 2, Projekt UDENFOR, April 2012, Fonden Projekt UDENFOR.
318 Official websites [http://www.blaakors.dk](http://www.blaakors.dk) and [http://gracekbh.dk](http://gracekbh.dk)/.
319 Cf. i.a. the guide to legal aid at [http://www.retsjaelpsguiden.dk/Steder.html](http://www.retsjaelpsguiden.dk/Steder.html), accessed on 29 June 2013.
320 All links were accessed ultimo June 2013.
**DENMARK**


**Main Executive Orders**


**Main Circulars, Memoranda, Agreements etc.**

*Aftale mellem regeringen og Enhedslisten om: Initiativer mod social dumping 8. november 2012*, available at [www.bm.dk](http://www.bm.dk)


Cirkulære om jubileumsgratiale til ansatte i staten (‘Circular on Grade for Employees in the State’), Circular No. 9111 of 15 April 2011, available at https://www.retsinformation.dk/Forms/R0710.aspx?id=136871


Information og materiale om den danske strategi for inklusion af romaer i Danmark, til samtlige kommuner fra Departementschefen, Social- og Integrationsministeriet, 20 August 2012, J.no. 2011-6568


Notat om adgangen til ud- og afvisning af EU-/EØS-statsborgere på baggrund af subsistensløshed eller af hensynet til den offentlige orden (‘Memorandum on the Access to Expulsion and Refusal of EU/EEA Citizens on Grounds of Destitution or Considerations on Public Order’), the Ministry of Refugee, Immigration and Integration Affairs, 30 June 2011

Notat om EU-borgeres ret til hjælp (‘Memorandum on EU Citizens’ Entitlement to Assistance’), Københavns Kommune, Socialforvaltningen, 7 September 2009, case no. 2009-87418, doc. no. 2009-521046

Orientering vedr. situationen omkring udenlandske hjemløse, der tager ophold i Københavns Kommune (‘Information about the Situation concerning Foreign Homeless who Stay in Copenhagen Municipality’), Københavns Kommune, Socialforvaltningen, 25 May 2010, case no. 2010-77913, doc. no. 2010-347072

Personaleadministrativ Vejledning (‘Guidance on Personnel Administration’), 11 January 2013, the Agency for the Modernisation of Public Administration, an agency within the Ministry of Finance, available at http://pav.perst.dk

Presentation to the European Commission of Denmark’s National Roma Inclusion Strategy, the Ministry of Social Affairs and Integration, Copenhagen, December 2011

Redegørelse, Konsekvenserne af EU-domme om ret til uddannelselser i udlandet, 12 September 2013, Europaudvalget 2012-13, EEU Alm. del, Bilag 561


Vejledning til statsforvaltningerne vedr. ophold efter EU-opholdsbekendtgørelsen (’Guidance on Residence under the EU Residence Order to the Regional State Administration’), 2009, available at www.nyidanmark.dk

Vejledning til § 12a i lov om aktiv socialpolitik m.v., (’Guidance to Section 12a in the Act on Active Social Policy etc.’), Guidance No. 33 of 4 May 2004, available at https://www.retsinformation.dk/Forms/R0710.aspx?id=30071


Reports, Guidance etc.

Employment in the Danish State Sector, the Agency for the Modernisation of Public Administration, November 2011, available at www.modst.dk


Rapport om hjemløse migranter i København, Del 1 og 2, Projekt UDENFOR, April 2012, Fonden Projekt UDENFOR, available at http://udenfor.dk/dk/menu/faglitteratur/projekti-udenfor-og-publikationer


Rapport om Optjeningsprincipper i forhold til danske velfærdsydelser by Udvalg om Udlændinges ret til velfærdsydelser, March 2011


Main rulings


Decision No. 239/2012, made on 14 March 2012 by the Board of Equal Treatment, available at
Decision No. 5/2013, made on 9 January 2013 by the Board of Equal Treatment, available at
Ruling of 4 January 2013, industrial arbitration, available at
Case No. B-2931-08 (unpublished), Eastern High Court judgment of 18 May 2011

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EU’s Romapolitik med Danmark som casestudie by Louise Lehman Egvang, Master’s Thesis, Department of Business and Politics, Copenhagen Business School, August 2012
‘Fradrag for rengøringshjælp m.v. i hjemmet: sker der en EU-stridig forskelsbehandling af udenlandske tjenesteydere?’ By Niels Gade-Jacobsen and Peter Nørgaard in Tidsskrift for Skatter og Afgifter 7/9 2011, TFS 2011
Kort om Udenlandske medarbejdere, Martin Steen Kabango, Dansk Arbejdsgiverforening, 1st print, December 2012
Uddannelsesstøtten i EU-retligt perspektiv - Studiejob eller statsborgerskab?” by Henrik Skovgaard-Petersen Juristen, No. 2, April 2013