

## THE DANISH VIEWPOINT

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Do workers posted to Denmark get the agreed sectoral minimum wages?, do they get similar wages to local workers?, and do Danish practices of calculating minimum wages paid to posted workers conform with the EU Posted Workers Directive? These are the three main questions being answered by this article. The three answers are in brief: 1. *yes-but* – most posted workers are covered by collective agreements, but foreign employers are less subject to such agreements than the Danish ones; 2. *no-but* – posted workers get lower, but only slightly lower wages on average; and 3. *yes-but* there are examples of non-conformance.

Ai lavoratori distaccati in Danimarca vengono corrisposti i salari minimi negoziati a livello settoriale? Tali lavoratori ricevono lo stesso salario dei lavoratori locali? Inoltre, i metodi adottati in Danimarca per il calcolo dei salari minimi corrisposti ai lavoratori distaccati rispettano la direttiva UE in materia? Questi sono i tre quesiti principali ai quali il presente articolo fornisce una risposta. In breve: 1. *sì, ma* – la maggior parte dei lavoratori distaccati sono coperti dai contratti collettivi, tuttavia i datori di lavoro stranieri sono vincolati a essi in misura meno stringente rispetto ai loro omologhi danesi; 2. *no, ma* – i lavoratori distaccati ricevono sì salari più bassi, ma la differenza è mediamente molto contenuta; 3. *sì, ma* vi sono esempi di violazioni.

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### 1. INTRODUCTION

Denmark has no minimum wage set by law. Instead, minimum wages as well as many other working conditions are defined in collective agreements negotiated by the trade unions and the employers' organisations at a sectoral level – and there are numerous such sectoral agreements. This also means that minimum wages differ between sectors, i.e. a given sectoral minimum wage applies only to the workers – both local workers and posted workers – covered by the given agreement.

The purpose of this Danish viewpoint is to shed some light on the question of whether the Danish wage setting mechanism provides the required protection of posted workers in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 ("PWD") concerning the posting of workers in the framework of the provision of services, and in this context whether this ensures a level playing field between

local and foreign competitors. We do this by firstly reviewing the Danish labour law and the accompanying wage setting mechanism in order to disclose whether there are elements or procedures that may discourage equal treatment. Secondly, we look more into how the constituent elements of the minimum rates of pay are defined and how they are applied or guaranteed to workers posted to the Danish labour market.

## 2. DENMARK'S LABOUR LAW AND THE WAGE SETTING MECHANISMS

Denmark has had regulation on worker protection since 1873 when a government authority – the Danish Working Environment Authority – was set up to supervise compliance with the Act. The current Working Environment Act<sup>1</sup> from 2010 aims at preventing accidents and diseases at the workplace and at protecting children and young persons on the labour market through special rules. The main areas of the legislation are performance of the work, the design of the workplace, technical equipment, substances and materials, rest periods and young persons under the age of 18.

Minimum wages are not determined by the Danish labour market law. Instead, minimum wages and many other working conditions are defined in collective agreements negotiated by the trade unions and the employers' organisations at a sectoral level<sup>2</sup>. Hence, such agreements contain also provisions for overtime pay, sickness pay, and maternity/paternity pay, and there are typically agreements on working time, pension arrangements, and terms of notice.

Wages paid to the workers in Denmark do therefore, for around 80% of workers, take outset in collective agreements negotiated by the trade unions and the employers' organisations. About 75% of Danish employees are members of a trade union, with union density varying from sector to sector. However, also employees who are not trade union members must be offered the same pay and working conditions as other employees in an enterprise covered by a given collective agreement. Furthermore, if an employer is not a member of an employers' organisation, the trade union may try to enter into a collective agreement with the individual employer. If not successful, the trade union has the right to take industrial action against an employer – i.e. an employer who does not enter into an agreement and who does not provide the given sectoral minimum wage or other agreed working conditions. Such industrial action may also be taken against a foreign employer that temporarily has posted employees to Denmark, hereunder to ensure that the foreign employer has been made aware of the provisions laid down in the relevant collective agreement that are entered into by the most representative social partners in Denmark, and that are applicable to the whole Danish sector.

The collective agreements are renegotiated every second or third year. The minimum wage levels negotiated in the agreements are connected to the – at the time – present economic situation in Denmark. In addition, Danish companies' increasing dependency on international markets also constitutes a strong influence on the wage setting structure as well as the minimum wages agreed. This is also one of the crucial elements in the development towards a more flexible decentralised wage setting structure<sup>3</sup>. Thus, the wage setting mechanism does to some extent reflect the international economic situation.

<sup>1</sup> Cfr. <http://engelsk.arbejdstilsynet.dk/en/regulations/acts/working-environment-act>.

<sup>2</sup> See Danish Ministry of Employment (2009) for a guide to foreigners who consider working in Denmark.

<sup>3</sup> See Due, Madsen (2006) for a comprehensive analysis of developments of the Danish social dialogue.

Our EC (2015) study found that the Danish sectoral minimum wages on average are more than 50% higher than the universal minimum wages set by law in the comparable countries: Belgium, France, Germany, and the Netherlands. Hence, the Danish labour market – at least when it comes to low-paid jobs – seems from this perspective not to be very competitive. However, seen from the viewpoint of mobile EU-workers, such as posted workers, Denmark is an attractive country to draw one's wages – also for the workers receiving minimum wages only. This said, the cost of living is relatively high in Denmark, which is reflected in the fact that average wages also in general are higher than in these comparable four countries.

Our EC (2015) study also found that average wage levels are similar for three of the four sectors<sup>4</sup> covered by the analysis, i.e. construction, transportation, and human health and social work, and are so from this perspective equally attractive for posted workers and other mobile EU-workers.

### 3. WAGE SETTING MECHANISM INTERACTION WITH POSTED WORKERS

Three questions arise when analysing the interaction between the wage setting mechanism, in particular the setting of minimum wages, and posted workers: do posted workers get the agreed sectoral minimum wages?, do posted workers get similar wages to local workers?, and what are the constituent elements of the minimum rates of pay provided to posted workers?

Regarding the first question, our EC (2015) study found that, from the register of foreign service providers (*Registret for Udenlandske Tjenesteydelser*), also known as RUT<sup>5</sup>, that contains compulsory registrations, we have a good picture of the number of posted workers in Denmark. However, neither the Danish trade unions nor the Danish employers' organisations have good accounts of the number posted workers covered or not covered by a collective agreement or adoption agreement, and how many do not receive minimum wages according to the agreements.

It is though the impression of the employers' organisations that posted workers today are covered by collective agreements to the same extent as Danish workers. The trade unions, however, underline that a big challenge is that foreign companies often do not comply with the collective agreements (both normal and adoption agreements) they have signed. Similarly, Hansen and Hansen (2009) concluded that some posted workers experienced that they were often not paid for the work they performed and that many – both posted and not posted Polish workers who were covered by a collective agreement – did not receive the minimum wage. This was, for example, the case for a period at the construction site of the Copenhagen metro.

The impression of equal coverage of collective agreements is not fully shared by Larsen (2011) who made a survey amongst Polish workers. Thirty-eight per cent stated that they were covered by a collective agreement, 13% said they were not, 28% told they were not aware of whether they were covered, and 19% noted that they were unaware of what a collective agreement is. Hence, this study underlined that it was hard to say if the Polish workers were actually covered or not to the same degree as Danish workers. However,

<sup>4</sup> It was not possible to calculate an average wage for the fourth sector: temporary work agencies.

<sup>5</sup> Cfr. [https://indberet.virk.dk/myndigheder/stat/ERST/Register\\_of\\_Foreign\\_Service\\_Providers\\_RUT#faq](https://indberet.virk.dk/myndigheder/stat/ERST/Register_of_Foreign_Service_Providers_RUT#faq).

being unaware of whether they were covered by a collective agreement or not, could indicate that they did not know what wages and working conditions they were entitled to. Larsen (2011) also concluded that migrant eastern European workers covered by Danish collective agreements in general receive higher wages and have better working conditions than those not covered.

Hansen and Hansen (2009) also found that a large part of the Polish posted workers working in the Copenhagen area had an informal relation to the labour market, or were in “the grey area”. This meant that their employment, in various degrees, did not involve elements such as receiving their payment in a bank account or having a contract with a company.

The answer to the first question of whether posted workers get the agreed sectoral minimum wage can therefore not be answered with certainty. On the one hand, the well-functioning Danish collective bargaining system implies that there are many social partners acting as watchdogs to ensure that agreements are made and complied with. On the other hand, there are indications of that the posted workers and their employers are relatively less subject to collective agreements than their Danish counterparts – leading to a number of cases where the minimum wage is not received.

This finding has also influence on the answer to the second question of whether posted workers get similar wages to local/Danish workers – i.e. the cases where the minimum wage is not received point to that this is not the case. However, it is the impression of the employers’ organisations that the posted workers receive comparable, although slightly lower (10-15%), wages than the local/Danish workers, and that this is the case whether they are posted to a Danish company or to a foreign-owned undertaking located in Denmark. The reason for the slightly lower wage is that posted workers often do not receive an additional decentralised negotiated wage element.

It is also the impression of the trade unions that posted workers receive wages below the average that Danish workers receive. This is partly because posted workers even within the same work place carry out the work functions that require the fewest skills and so also give the lowest pay. However, since Danish wages often are much higher than in the eastern European countries, posted workers from this part of the EU seem to worry less about being paid below average. Furthermore, a study by Udvalget om modvirkning af social dumping (2012) concludes that mobile EU-workers being far away from family and friends often leaves them with fewer obligations, and hence more flexibility in relation to working hours. Similarly, Hansen and Hansen (2009) found that the posted Polish workers were the ones having the lowest income and the highest amount of working hours amongst all the Polish workers in Denmark. The average wage for posted workers was at that time DKK 103 (EUR 14) per hour and 37% of the posted workers had 49 working hours or more per week.

At the sectoral level, our EC (2015) study found indications of that posted construction workers relatively frequently are subject to low wages – hereunder below the minimum wage, i.e. they are amongst the 10% of all construction workers that receive the lowest wages. Regarding road transport, the study actually found that there are only very few “officially” posted workers in Denmark. Hence, most foreign workers/drivers instead claim to work according to the rules on road cabotage laid down in Regulation (EC) No 1072/2009, and the trade unions claim that such cabotage drivers receive wages far below the Danish drivers.

The final question is then whether a minimum wage paid to a posted worker is actually calculated in the right way according to the provisions in Article 3(1) of the PWD – i.e. re-

garding the constituent elements of the minimum rates of pay provided to posted workers. Constituent elements is a concept defined by the national law or practice of the host state – i.e. in this case Danish collective agreements – insofar as the definition does not have the effect of impeding the freedom to provide services between Member States. In some Member States the constituent elements may be more or less limited to minimum wage, including overtime rates, while in others they may include a number of different kinds of bonuses, allowances or contributions to funds.

In general, our EC (2015) study found that Danish practices are in accordance with the PWD. For example, when a posted construction worker is covered by a collective agreement, the employer pays an extra 0.15% of the gross salary to cover holiday allowances, health insurance, and education funds. Furthermore, the calculation of the minimum rates of pay generally exclude items such as bonuses, additional remuneration based on working conditions, social security contributions and similar, and allowances specific to the posting. The trade unions have, however, seen examples of foreign companies including highly priced food, transport and accommodation as part of the wages. Others, they say, provide payslips with the correct amount but request either that the posted workers work more hours than noted on their payslip, or that they return part of the wage in cash.

Furthermore, the Danish courts have ruled that foreign companies posting workers in some cases can make use of allowances specific to the posting to meet the minimum rates of pay requirements. The assessment of whether a particular payment can be counted towards minimum rates of pay or whether it is made in the reimbursement of costs incurred on account of posting is made on a case-to-case basis. As a rule, there is a presumption that the payment was made in the reimbursement of the costs incurred (in particular when it is paid without deducting contributions to social security) and it is for the foreign service provider to prove that it should be considered to constitute an element of the minimum rates of pay. For example, an allowance paid in addition to the (documented) reimbursement of transportation and accommodation costs, where the posted workers in question have not incurred any additional expenses, was considered to be capable of being included in the calculation of the minimum rates of pay.

#### 4. CONCLUSIONS

With Denmark having no minimum wage set by law, much relies on the trade unions and employers' organisations to negotiate a minimum wage that enables workers to have a decent income and that enables companies to be competitive on the international market. Fortunately, Denmark has for many years build up a well-functioning collective bargaining system which, at sectoral level, has led to agreements on minimum wages that on average are more than 50% higher than the universal minimum wages set by law in the comparable countries: Belgium, France, Germany, and the Netherlands.

Wages paid to the workers – local and posted workers – in Denmark do therefore, for around 80% of workers, take outset in collective agreements. However, also employees who are not trade union members must be offered the same pay and working conditions as other employees in an enterprise covered by a given collective agreement. Furthermore, if an employer is not a member of an employers' organisation, the trade union may try to enter into a collective agreement with the individual employer. If not successful, the trade union has the right to take industrial action against an employer.

Hence, from this perspective, there are many social partners acting as watchdogs to ensure that posted workers get the agreed sectoral minimum wage, and it is overall the impression of the employers' organisations that this is the case. The trade unions, however, underline that a big challenge is that foreign companies often do not comply with the collective agreements they have signed. Furthermore, there are indications of that the posted workers and their employers are relatively less subject to collective agreements than their Danish counterparts – leading to a number of cases where the minimum wage is not received.

This in itself indicates that posted workers in general may get lower wages than local/Danish workers. This is also the impression of both the trade unions and the employers' organisations. Slightly (10-15%) lower wages are both due to that posted workers do not manage to obtain additional decentralised negotiated wage elements, and due to the fact that many posted workers carry out the lowest paid jobs. However, since Danish wages often are much higher than in the eastern European countries, posted workers from this part of the EU seem to worry less about being paid below average, and being far away from family and friends often leaves them with fewer obligations, and hence more flexibility in relation to working hours.

Finally, we found that the minimum wage paid to a posted worker in Denmark overall is calculated in the right way according to the provisions in Article 3(1) of the PWD – i.e. regarding the constituent elements of the minimum rates of pay provided to posted workers. Although, the trade unions have seen examples of foreign companies including highly priced food, transport and accommodation as part of the wages.

We therefore conclude that workers posted to Denmark in most cases are provided with minimum wages similar to those of local/Danish workers. Although, wages in general may be slightly lower due to less experience with negotiating additional wage elements, due to that posted workers often carry out low-paid jobs, but also due to cases where agreements are not complied with or subscribed to. We therefore do not see the posting of workers to comprise a major threat to a level playing field between local and foreign competitors in Denmark.

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