



EU and the Danish model

30 January 2017

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EU and the Danish model, problem definition

Introduction

The Danish model

The principle underlying the Danish model is that the legislature leaves it to the social partners to set wages and working conditions in the collective agreements. The most important means for the social partners, in this connection, is their right to form associations to that can see to their collective interests and take collective action in connection with attempts to conclude collective agreements.

The legislature has therefore been very reluctant to legislate on pay- and working conditions. This division of labour between the legislature and the social partners was clearly established in the parliamentary debate on the establishment of the Permanent Court of Arbitration in 1910. This division of labour can be seen as an unwritten contract between the social partners and the legislature. Since it is an unwritten contract, meanwhile, it would not be fair to say that this division of labour is a completely consistent and unchangeable division of labour.

Firstly, exceptions to this division have quite often been made. This has, for example, been the case with the Holidays Act, the Danish Salaried Employees Act, the Seafarers' Act and the Farm Assistants Act and, more indirectly, the Road Haulage Act. All acts are examples of how the state has regulated areas that have otherwise been left to the social partners to regulate. Secondly, the influence from international and supranational bodies have affected the regulation. In 1966, for example, the state took on the task of using labour clauses in state contracts to ensure terms and conditions in public contracts that are in accordance with the conditions established in collective agreements. And with Denmark's entry into the EEC and with the later amendments to the treaties, legislative powers have been surrendered in sub-areas such as working conditions, equal opportunities, the free movement of labour and health and safety at work.

What characterises these areas is that the social partners have, very often, had a significant influence on the regulation that has come from the legislators.

Furthermore, legislative intervention can reflect a situation by which the legislature trusts the social partners to take on a social responsibility, that specific problems are solved and that the legislative power intervenes if this trust is breached.

The division of labour has also manifested itself in the so-called flexicurity model according to which collective agreements govern the conditions that apply to dismissals. By European standards, these terms and conditions are not strict. In return, the state has provided social protection and an active labour market policy.

Finally, a central element of the Danish model is that it does not only have to do with labour market regulation. It is also a model for a broader cooperation on the development of society between the trade union movement, the employers and the politicians. The development of the labour market cannot be isolated from the other parts of society and the political framework conditions are therefore essential to the regulation, which is agreed between the trade union movement and the employers.

The challenges

The central organisations are facing a number of challenges relating to the EU. This is, among other things, due to increased regulation of the overall economy of the nation states, increased focus on pay and working conditions and deregulation of key rules on the labour market and labour market conditions.

There are a number of very different scenarios for the development of the EU in the coming years. A major current challenge is how to integrate the social- and labour market policies in the reinforced economic policy coordination in the EU. The increased economic integration has already had the effect that considerable elements of the member states' wage development, social conditions etc. are monitored. This takes place in connection with the annual growth surveys and labour market analyses.

The challenge facing the Danish model is that labour market conditions, which we, with reference to the EU-treaty, have so far considered purely national matters, are now moving towards a common European policy coordination.

A crucial factor in the European cooperation for the coming years is the outcome of the British referendum on EU-membership on 23 June 2016. At the time of writing, the British have not yet activated article 50, and even when or if they do so, the situation will still be insecure for years to come. On this basis, it is impossible to assess the importance of Brexit in relation to the EU as a whole and the labour market. However, regardless, the issue will undoubtedly take up a lot of time and space.

One possible future scenario for the EU is a roadmap towards a more extensive cooperation, which might lead to a new treaty. This includes considerations on increased democratization of the EU's decision processes etc. and that the voluntary economic agreements/various economic pacts under the current European semester will be incorporated into a new treaty, thereby taking on a more binding character. However, a more likely scenario is probably that the EU's development in the coming year will be based on intergovernmental agreements revolving around the euro area countries.

Regardless of which of the two scenarios will play out, the consequences for the strategic deliberations of the trade union movement are considered to be as follows; Denmark risks pressure to reassess the opportunities in terms of practical policy for upholding specific considerations for the Danish labour market model when/if the majority in the EU move towards more integration of social- and labour market policy, among other things by means of increased coordination of labour market reforms.

In most parts of the European trade union movement, there exists a general ambition to use the EU as a means for ensuring, among others, minimum standards for wages, working conditions and social benefits. It can therefore also be expected that the ETUC will demand certain concessions, for instance on social dialogue and negotiations if the integration process continues. Currently, the Commission is seeking to strengthen the involvement of the social partners in the economic cooperation, among other things by means of a formal tripartite cooperation and through a full dialogue with the social partners on the economic preconditions that form part of the planning process of the EU. A number of Southern European trade unions in the ETUC actively support a strengthening of this dialogue. This dialogue could also be extended to dialogue on other areas than the economy, for instance within the labour market and social fields, thereby strengthening the social dialogue.

Another issue that is likely to be brought to the table by the ETUC is a European minimum wage, which has been debated on a continuous basis during the past few years in, among others, the ETUC. At the moment, only Italy, Germany, Denmark, Austria, Cypress and Sweden have a (almost) purely negotiation-based wage - and Germany has now introduced a statutory minimum wage. The Danish trade union movement is closely monitoring this new situation in Europe in which support for the collective agreement-based labour market model is considerably decreasing, day by day, as the normative effects of the collective agreements are increasingly becoming outdated in Germany. This development, combined with the increasing problems with social dumping, can challenge the attitudes of the Danish trade union movement towards statutory minimum wages.

Strengthened coordination of collective agreement demands are a third issue that may be raised by the ETUC.

Discussions about such a development could be further complicated by the fact that it is unsure in which forums and between which countries decisions on strengthened integration in the EU would be taken. Would it be the core euro area member states or would it be in a broader circle of EU member states?

The Danish trade unions face the challenge that much of the EU is moving towards increased integration, including in the field of social- and labour market policy, with widespread support from within the ETUC. This will challenge the Danish labour market model. What position does it leave us in? This is the challenge of the trade union movement and it will be discussed in this paper by looking at five main areas:

1. New governance challenges the scope for economic policies and flexicurity and does not address the social crisis.
2. The EU's increasing interest in collective agreement terms as a means for promoting competitiveness in the EU member states.
3. Social dumping as a consequence of the free movement.
4. Deregulation of labour market rules and working conditions.
5. The social dialogue and the social partner's influence are under pressure on the labour market.

All five issues include an introduction to the background of the issue and a section accounting for the challenges to the Danish model. In conclusion, an outline of the strategic options for solutions is provided.

1. New governance challenges the scope for economic policies and flexicurity and does not address the social crisis.

Background

The European economy was severely affected by the financial crisis. The crisis led to a decrease in employment and a rise in unemployment in most European countries. Towards 2010, the crisis assumed a different character. Large government deficits pressured the European economies and necessitated austerity packages for a number of countries. In other EU member states, the EU-Commission introduced recommendation procedures. This meant that a number of countries were directed to reduce their government deficits by means of austerity measures and structural measures. The size of the deficits also brought into question the credibility of the European economies, which led to speculation against a number of Southern European economies, which again led to considerably higher interest rates on government bonds in the affected countries. This aggravated the crisis. Towards the end of 2011, the crisis also put the euro into doubt. This meant that a number of countries, including Denmark, entered an agreement on strengthened fiscal discipline and economic policy coordination (the Fiscal Compact). It is important to note, that the ECB took relatively long to address the crisis in the euro area which could otherwise have eased the austerity policies.

The financial crisis led to requirements to make major cuts to public spending.

The European handling of the crisis after 2010 primarily focused on containing public finances in order to restore the confidence of the financial markets in the European economy. This meant the EU introducing a tight financial reporting system under the European Semester and, at the same time, seeking to address the considerable structural problems in the Southern European countries while giving less priority to job creation. Some of the measures were necessary steps to restoring trust in the euro and in the European economies but have failed to address the job crisis, which Europe is going through. Actually, the tight fiscal control of the past few years has decreased the European countries' room for manoeuvre at a time, when it was necessary to strengthen employment. Even though there was financial latitude for easing of the policies in a number of Northern European countries, EU-recommendations to bring down large government deficits led to major cuts in public spending during a recession¹. Financial relaxation, which could have benefited Europe in general by strengthening demand, was not carried out. Such measures could have assisted the economic development and restored optimism within European companies and households. Experiences from Germany have taught us that a unilateral focus on wage competition leads to a fall in real wages and future growth initiatives therefore need to include this element in fiscal policies.

Challenges

In the wake of the European sovereign debt crisis, during the past few years, the first priority has been to restore confidence in the European economies by means of tightened financial reporting requirements rather than job creation. The tightened control of the European economies will also reduce the room for manoeuvre for economic policies in future. Surveillance of economic and fiscal policies is

¹ In the Autumn of 2012, in its Economic Outlook, the IMF established that public spending cuts have a greater negative impact on growth and job creation during the current crisis than they normally would which makes the cuts more harmful than they would otherwise have been.

part of the European Semester as a tool for coordinating the economic development of the member states. The European Semester monitors the national budgetary situation, reform measures and macro-economic imbalances.

The economic control process in the EU has now become so extensive that it is likely to lead to new legislative initiatives and subsequent delegated legislation. This will challenge the Danish labour market model.

The financial crisis is a job crisis

The social crisis has worsened throughout the EU. More and more citizens are excluded from the labour market. Long-term unemployment and youth unemployment have reached new heights. The financial crisis in Europe is also a job crisis - especially in Southern Europe. At the same time, a considerable increase has occurred when it comes to the number of workers who receive wages that are far lower than the means required to lead a decent life.

It is important that there is confidence in the European economy. It is also important that there is room for manoeuvre when it comes to investment in growth and jobs during grave and prolonged economic downturns.

However, the main challenge in the economic policy and the EU's monitoring is that they do not address the job crisis that the EU is facing right now.

We recognise that an investment plan has been adopted in 2015, which is to contribute to creating jobs as was called for by the trade union movement. Meanwhile, there continues to be a need for further initiatives to support growth and employment in the EU. The opportunities for increasing funds for the European Investment Bank should be uncovered since this would generate private capital for viable projects. Furthermore, a coordinated effort by which Northern European countries with financial latitude can ease their financial policies would be to the benefit of all of Europe. These measures can reduce the effects of the extensive crisis and create renewed optimism.

Flexicurity under pressure in Europe and at the national level

The tight fiscal policy regime is also challenging flexicurity in Denmark. Among other things, this became apparent when Denmark received a EU-recommendation to reduce its structural deficit by 1.5 % of GDP between 2010 and 2013. This set off the so-called restoration package and with it the halving of the unemployment benefit period. This weakened the security element of the flexicurity-system markedly.

In spite of this, the European Commission and labour market researchers have praised Danish flexicurity as a model for labour market policy in Europe. Meanwhile, an EU-version of flexicurity has been launched in some countries as part of a number of austerity measures. The primary aim has been to create a more flexible labour market and less focus has been given to the security-element.

It must be an important aim for the European trade union movement to assist in preventing a one-sided focus on flexibility in European labour market policy. It is important to address the social challenges. Introducing flexicurity must therefore not be an exercise in cost cutting. An active employment policy and support for the unemployed must not be given a lower priority.

Tight fiscal control has been implemented in Denmark through the Budget Act. It challenges the Danish flexicurity model because the Budget Act contains spending ceilings, which, to a certain extent, also affects items of expenditure that have to do with active labour market programmes and lifelong learning. Meanwhile, the expenses for unemployment benefits are not directly included.

An important challenge facing the Danish flexicurity model must be to ensure a well-functioning, active employment policy, which brings the unemployed back to work quickly. In addition to this, it must ensure continuing education and training which support lifelong learning so that the workers receive continuing education and training which equips them better to face the ever-changing requirements of the labour market. It also means that these measures should be given a higher priority during economic downturn since they will automatically support the economy in difficult times.

Strategic possibilities for the Danish and European trade union movements

The central organisations and the affiliated organisations should, on a continuous basis, discuss the attitude of the trade union movement towards the economic policy in Europe and in Denmark, and in this connection, the opportunities as well as the restrictions that are imposed on economic policy in Denmark. It is particularly important that the Danish trade union movement, together with our European partners, seek to influence the EU's economic policy and "mitigate" the damages on the Danish system.

This work must support the Danish model. The efforts should include the following;

- The coordination of the economic policy - fiscal and monetary policy - in Europe must support growth and employment for all groups of workers.
- The Danish labour market model must be respected. It is important that EU-legislation does not weaken the Danish flexicurity model.
- The economic policy in the EU should also focus more on the social challenges.

The economic crisis in Europe has developed from a financial crisis into a debt- and confidence crisis, but it has never stopped being a real-economic job crisis. The job crisis challenges both the European economy and the European trade union movement. The European effort to create growth and jobs is therefore a central line of sight.

Proposals for solutions

- In future, the coordination of economic policies in Europe should also focus on promoting employment. This includes both fiscal and monetary policy. Growth and employment should constitute binding targets in the European Semester.
- The European investment plan should be followed up by further initiatives which promote employment in the short term and which invests in the Euro.
- Excluding public investments that have been brought forward from the medium-term lower limit for structural deficits in times of severe and prolonged economic downturn.

- National legislation should not be tighter than that of the Fiscal Compact. The requirements of the Danish budget act regarding the structural public deficit should be in line with the requirements of the Fiscal Compact.²
- Expenses for the flexicurity model during severe and prolonged economic downturns should not be affected by the spending caps and should be excluded from the requirements on limits for deficits.

2. The EU's increasing interest in collective agreement terms as a means for promoting competitiveness in the EU member states.

Background

Wage development is, as a point of departure, and in accordance with the EU-treaty, a national competence. However, increased global competition and European economic integration have the effect that the EU is actually, to a wide extent, defining the framework for the wage development of the EU member states.

In 2013, the annual EU-recommendations for economic policy for a number of countries were, for example, to ensure a better coherence between wage development and productivity. Certain countries received more specific recommendations to limit the wage development. For example, direct warnings are issued against wage indexation or against a certain wage development exceeding x per cent. The message from the EU-Commission to Denmark was that the most important means for maintaining competitiveness was to ensure a moderate wage development, which would not contribute adversely to prices and costs and ensure that Danish exports were flexible and that productivity should be improved - especially in the services sector.

The EU is attempting to influence wage formation. - Primarily by means of the European Semester. The EU focuses on wages as being costs. The EU's economic agenda seeks to strengthen competitiveness and dampen inflation by limiting wage development. During the past decade, large parts of Europe have faced fierce wage competition and subsequent downward pressure on wages. This has increased inequality in the individual member states and has set back the economic development. Because even though the competitiveness of European wages vis-à-vis the rest of the world have a considerable impact on the continent's exports and imports, there is, within the EU, a rising awareness of the fact that stagnating or declining wages can act as an impediment to economic growth because two thirds of the exports from EU member states are imports into other EU member states. A one-sided focus on wage competition therefore affects demand.

² The medium-term requirements for the structural balance of the general government and government debt is supplemented by a structural balance requirement that a structural deficit must not exceed a lower limit of 0.5% of GDP, however, this requirement can be altered depending on the financial position of the individual member state. The sturdiness of the Danish economy has had the effect that the EU-Commission's requirement for a lower limit of a structural deficit has been raised to 0.75 % of GDP while the requirement for a lower limit in accordance with the Budget Act remains at 0.5% of GDP.

The social partners typically see wages as an expense/income, which affects competitiveness. In the macro-economic debate, employers typically see wages as production costs/expenses while the European trade union movement sees wages as an important tool for demand and for a fair distribution of wealth.

Challenges

The above developments face the European trade union movement and not least the Nordic/Danish trade union movement with three challenges.

1. The EU's interference in wage-setting

A major challenge for the Danish trade union movement is to come to a decision on how to stop or limit the EU's interference with wages. A stand has to be taken on whether or not the European trade union movement - including the ETUC - can obtain a stronger influence on the economic and political development in the EU. The issue is further complicated by the fact that positions are divided, as there is a risk of a two-speed Europe in future (euro area, non-euro area, North and South etc.)

2. Different attitudes towards the introduction of a minimum wage in the European trade union movement

There is (once again) a vibrant debate on the introduction of principles on a European minimum wage.

There are different attitudes towards this issue among the trade union movements in Europe when it comes to how the European trade union movement should respond to the challenge of wage formation and the downward pressure on wages in Europe. A number of Southern- and Central European trade union movements are very hardly pressed and see the central EU-wage measures as a safeguard against deteriorations.

In this connection, an important challenge is to maintain the autonomy of the social partners in connection with the conclusion of national/industry collective agreements, including and not least, wage agreements. Another specific challenge is the different views on whether or not minimum wages can limit social dumping.

Different models have been suggested in connection with a (European) minimum wage. Exact European criteria for a minimum wage (for example 50 % of the medium wage or 60 % of the medium wage in every country), general criteria for a European minimum wage (for instance a "fair" wage), nationally established practise for minimum wages which is "fair" (the ETUC's current policy), erga omnes principles for a national minimum wage in each country (for example through universal coverage of the minimum wage set in a collective agreement) or a national minimum wage which is solely based on national/industry-specific collective agreements (as is the case in Denmark today).

3. Declining unionisation rates

The ETUC and its affiliated organisations are challenged by the decline in union membership. Furthermore, during the crisis, there was only a limited extent of collective bargaining, or trade union organisations were overlooked in tripartite discussions – to the extent that any such discussions took place at all.

These challenges call for a Danish trade union strategy defined by the Danish and the European trade union movement on the sensitive topic of wages- and collective agreement conditions in the EU.

Strategic possibilities for the Danish and European trade union movements

It is important that the Danish trade union movement endeavours to increase its influence at the macroeconomic level in the EU as well as on the discussion of wages- and working conditions that will inevitably arise in the coming years in the EU - and not least in the European trade union movement.

In this connection, the Danish trade union movement should strive to ensure that the joint positions that are adopted by the European trade union movement reflect a regard for the national systems.

The issue of efficient and flexible labour markets is often raised during the negotiations that take place during the social dialogue and therefore played a major role during the negotiations on youth unemployment. Most recently, the European social partners have launched a survey in order to examine this issue more closely. It is important to the trade union movement to act based on the assumption that there is no inherent conflict between flexibility and efficiency on the one hand and protection of core labour standards on the other hand.

Proposals for solutions

The Danish trade union movement should aim for greater influence on the economic policy in the EU and for a strengthened unionisation rate. Among other things, this can be achieved by working to ensure that the ETUC has a stronger position in the social dialogue with the European Commission in order to influence both the general macro-economic debate in the EU and focus on wages in the economic coordination in the European Semester, since they both affect wage rate developments.

It is in the interest of the Danish trade union movement that the possibilities for collective agreements are improved and, in general, that the negotiation possibilities among Europe's workers are improved through strengthened trade union organisations. Efforts must be made to strengthen the social dialogue in the EU in a way, which takes into consideration the different characteristics of the national systems and respects the autonomy of the social partners. European level cooperation of collective agreement issues can be strengthened by means of exchange of experiences, guidelines and idea catalogues. Finally, it is evident that the long-term goal is to strengthen unionisation.

The trade union movement should support political initiatives that strengthen the labour market. We must work for flexible, well-functioning labour markets, while also countering initiatives that create new groups of low-income employees and the so-called working poor.

The trade union movement must be watchful of the autonomy of the social partners and the right of the individual member states to freely choose their own labour market system.

3. Social dumping as a consequence of the free movement.

Background

Denmark

The regulation of the Danish labour market has, traditionally, mainly taken place by the conclusion of collective agreements between the representative social partners. Whether or not a collective agreement applies to a specific worker depends, primarily on the circumstances of the employer. It only applies if the employer is a member of an employers' organisation which has concluded the collective agreement or which has independently concluded a collective agreement with a union. Secondly, the collective agreement applies if the work situation in question falls within the scope of the occupational field defined in the collective agreement. Coverage is thus independent from the union membership of the worker.

EU law

The rules on the single market provide free movement of labour. In this context, the rules on free movement for services and labour are of primary interest.

As far as the services are concerned, according to the rules, it must be possible to provide services freely across borders. This means that restrictions on the free movement of services are, as a point of departure, prohibited. Among other things, the free movement of services include the possibility of the service provider to use employees from his/her home country in connection with the provision of services in the host country. The law of the country of origin therefore, in general, regulates the employment conditions of these workers. The host member state must also ensure that a limited core of obligations and rights from the legislation of the host country are applied (the Directive on the posting of workers).

The rules on free movement of labour notably entail that workers are free to take residence and employment in another member state and that any discrimination based on a worker's nationality is forbidden. There is thus a significant difference between the legal basis for working conditions for posted workers and for migrant workers.

EU de facto

The enlargements of the EU in 2004 and 2007 significantly changed the socio-economic balance among the member states. This led to a much more widespread incentive-based structure based on the socio-economic differences. For example, the GDP per capita in Denmark in 2013 was EUR 444,400 while it was approximately EUR 10,000 in Poland. The figures for the Baltic States were a little higher than that while those of Bulgaria and Romania were significantly lower. These differences have led to a flow of labour and services from the new member states to the old member states. There is great uncertainty when it comes to ascertaining the extent of these flows. However, one thing is for certain, they are rising steadily.

Challenges

The flows of labour and services across borders creates the challenge that a new workforce is now available - either directly (the free movement of labour) or indirectly through contracts and temporary work (services). This workforce is willing to perform work at a salary and on terms that are considerably inferior to the salary and terms that a Danish worker would accept.

The main challenge for the trade union movement is to ensure that work performed in Denmark is carried out on terms and conditions that are in accordance with the representative collective agreements and, in this way, protect the union members against the kind of unfair competition, which we characterize as social dumping.

In a system where the primary regulation of paid work consists of civil law agreements concluded within the framework of organisations, the first challenge lies in ensuring that the foreign players are covered by the regulation.

When it comes to direct employment in national companies, this is similar to the challenges of regular trade union work and this employment will often be covered by collective agreements. However, this is modified by the fact that, to an increasing extent, the trade union movement meet employers from the new EU member states that have established themselves in Denmark. However, if the work is performed by a foreign company and thus as part of the free movement of services, the union has the task of ensuring that this work becomes covered by a collective agreement. In these situations, the challenges are complicated by the fact that:

- Foreign companies are entering in relatively large numbers.
- Entering into collective agreements with a Danish union often appears unfamiliar, unexpected and thereby adds to the expenses of the foreign company.
- Therefore, foreign workers may fear risking their jobs and may be opposed to the conclusion of a collective agreement.
- The rules on free movement places tight restrictions on the conclusion of collective agreements.
- The company in question is, in many cases, a sole proprietorship, which is often a disguised employment relationship (fictitious companies). In any case, it does not make much sense to seek to conclude a collective agreement with this type of company.
- Often, there will be no person in the company with the power to enter into a collective agreement on behalf of the company.
- The work is often organised in a subcontracting chain whereby the responsibility for pay- and working conditions is pushed downwards in the chain - often to businesses that are not very cooperative vis-à-vis the trade union movement or very financially stable.
- In the transport sector, there exists a specific challenge in the fact that the presence of both companies and workers is very fleeting because of the nature of the work. Meanwhile, this is a well-known issue at the national level and it is addressed in the rules of the Road Haulage Act on collective agreement conditions as a precondition for a haulier's licence.

Once work is covered by a collective agreement, the next challenge is to enforce that agreement.

Enforcement challenges

The enforcement of the free movement of labour is complicated by the fact that foreign workers are very often not unionised. Generally, efficient enforcement is very difficult to carry out if workers are not unionised.

This rule also applies to services. In addition to this, both legal, cultural and language barriers complicate the industrial disputes procedures when unions and businesses are of different nationalities. The implementation of the enforcement directive is expected to remedy some of the problems concerning the enforcement of claims. However, the final implementation has not yet been adopted. On the other hand, based on the outcome of the referendum of 3 December 2015, it does not look as if the Danish trade union movement will be benefiting from account preservation orders, among others

When work is not covered by a collective agreement, there is almost no lower limit to which pay- and working conditions can be applied.

Finally, tax conditions and access to welfare benefits can be included in the pay packages that are offered to foreign workers and they thus become competitive parameters in unfair competition.

Strategic possibilities for the Danish and European trade union movements

There are three main tracks, or arenas if you like, to meeting these challenges.

- One possibility is to consider if it would be possible to adjust the legislative framework for the regulation of wages and working conditions in order to make the model more robust in a cross-border context.
- Another possibility is EU-level cooperation on rules on choice of law, enforcement, posting and other aspects of labour law regulation.
- Finally, it is a possibility to put forward collective agreement-based claims with a view to making the collective agreement-based more robust in this context.

The dilemma in the discussion on legislative frameworks, including universal coverage and a statutory minimum wage, is that it can be seen as a central solution model; meanwhile, it is also the choice of a legislative path, which will lead to considerable changes to the Danish model. The overall assessment is that letting the legislature play a greater role in the setting of pay- and working conditions entails the risk of demotivating the employers from entering into collective negotiations and the risk of influencing the access to launch collective action negatively.

Meanwhile, it is important to monitor these developments closely. For example, a strong growth in the working poor segment or a negative development in the coverage of collective agreements would necessitate a re-assessment of this issue.

Proposals for solutions

When it comes to the legislative framework for the collective agreement system and wage competition, the following options can be put to use:

- A more efficient and consistent implementation of ILO Convention 94 (labour clauses in public contracts) for all government authorities and publicly owned companies and encouraging the regions and local authorities to apply similar labour clauses.

- Changed tax-rules for foreign workers, for instance by terminating double taxation agreements so that it will not be possible to work in Denmark without paying taxes in Denmark to the same extent as today.
- As for legislation-based requirements in connection with an employment relationship, such as taxes and social contributions (the Danish Labour Market Supplementary Pension and labour market contributions), they should be included in legislation on chain liability. This should also be applied to health and safety at work.

As for EU-law, the following should be applied:

- The member states' implementation and enforcement of the labour law directives should be subject to greater control at the EU-level.
- Access to enforcement of labour law decisions across borders should be ensured as well as efficient rules on enforcement. In this connection, it must be assessed to which extent the implementation of the enforcement directive remedies this issue.
- The geographical location of the workplace should have decisive importance to the choice of law in employment contracts.
- The ETUC proposal for a social protocol ensuring trade union rights should be adopted in connection with the accession of new member states. According to this protocol, fundamental rights, such as the right to strike, should always take precedence over the economic freedoms in the case of a conflict between the two. The Danish central organisations should work to promote support for the German-Austrian-Swedish initiative, which aims to commit the parties to adopting the protocol.
- In connection with the revision of the Directive on the posting of workers, the Danish trade union movement should work to ensure that posted workers should get the same rights to pay and working conditions as their Danish colleagues working with similar tasks. In this connection, it is vital that the competence to set wages and working conditions remains with the social partners.
- In terms of the transportation sector, the trade union movement should work to ensure that the national rules established with a view to protecting workers in transportation can be maintained and to protect the workers from the employers' possibilities for regulatory forum shopping.

Finally, the following could be sought promoted at the collective agreement level:

- Obligation only to use sub-contractors that are covered by collective agreements.
- Rules that make it easier in terms of labour law to determine whether a sole proprietorship is bogus self-employment or not.
- Chain liability.
- Stronger industrial disputes procedures (e.g. 48-hour meetings in the construction industry.)
- A sturdier scheme than the concept of disproportionality when it comes to wage setting in the decentralised collective agreements and the minimum wage area.

4. REFIT, Simplification of rules and worker protection

Background

Throughout a number of years, a number of initiatives have been launched with a view to promoting the simplification of rules and deregulation in the EU.

During the leadership of Barroso, the Commission set up an Advisory Committee in 2017 which completed its work in 2014 by handing over a set of recommendations which, among others, included extensive exemptions for micro-companies, competitiveness checks of all legislation and the establishment of an independent Committee of Experts which was to work with specific proposals on simplifications of rules.

Upon his accession, Jean-Claude Juncker appointed a First Vice President of the Commission, which was also given responsibility for REFIT (better/smart regulation).

In 2015, the Juncker Commission presented a new proposal on this area at set up, among other things, the so-called REFIT platform that consists of a government group of 28 representatives and a stakeholder group with 20 representatives from the corporate sector, trade union movement and other interest groups. The platform is headed by the Commission's First Vice President, Frans Timmermans, and has the power to influence the Commission's working programme. The ETUC has a seat in the stakeholder group.

At the same time, at the national level, there is increasing interest in the process of simplification of rules. A number of countries have committees that examine proposals for lightening burdens and making assessments on implementation. In Denmark, a number of years ago, the government set up the Business Forum for Better Regulation, which provides proposals on the simplification of rules, and in 2015, the government set up an EU-implementation committee, which is tasked with ensuring that Denmark does not "over-implement" new EU legislation.

The possibility to exempt micro companies from new directives

From June 2012, micro companies should, as a point of departure, be exempt from new directives unless there are specific reasons why they should be covered. If you exempt micro companies from legislation, this would have the effect that entire sectors will be largely exempt from regulation. This is, among others, the case when it comes to agriculture and construction - sectors that already have difficulties ensuring decent working conditions and countering social dumping. In practise, however, micro companies have not yet been exempted from any directives, to the declared disappointment of the Stoiber group.

Simplification of rules in an EU-context

The REFIT-platform commenced its work in the beginning of 2015 and must process incoming proposals. Partly via a new web site and partly by direct applications - and finally, members of the platform can make proposed changes themselves.

The REFIT-agenda is therefore not isolated but covers most areas. REFIT is therefore also mentioned in the Draft Council Conclusions on social dialogue. In addition, two working groups have

been set up under the auspices of the social dialogue tasked with the involvement of the social partners in the work with simplification of rules.

The European agenda is characterized by the fact that the British have placed great emphasis on the importance of easing administrative burdens and EU-red tape in connection with the negotiation of the agreement, which served the basis for the British referendum on EU membership of 23 June 2016.

It is also clear that the British government is very active in the REFIT-platform and presents a great many proposals to do with working conditions, including health and safety at work. One of these proposals is to exempt self-employed workers from the rest requirements in connection with cabotage driving. This proposal is not just a hazard to traffic safety, but it is also devastating to health and safety at work for the drivers. In addition to this, it is a proposal on an area, which the social partners have agreed to commence negotiations.

It is still too early to assess how the negotiations with Great Britain on Brexit and any execution of the British exit plans will affect the REFIT agenda.

Challenges

On the face of it, simplification of rules and the cutting of red tape are good objectives. The problem is that any administrative rule, including rules on health and safety at work can be looked on as a burden. Meanwhile, small, but also medium-sized companies constitute the major source of job creation in the EU. There is therefore no doubt that it makes perfect sense to promote the competitiveness of these companies and to make things easier for entrepreneurs who wish to start up their own business.

However, it may be problematic in itself to apply size as the defining parameter for determining whether a company should be covered by legislation or not. Regardless, it could be in violation of the treaty to provide an inferior level of protection for workers in small businesses when it comes to the protection of fundamental rights and health and safety at work.

There is an ongoing debate about excessive implementation of directives - the so-called "gold plating". It challenges the fundamental assumption that minimum directives should not be over-implemented - for instance, directives on health and safety at work.

Broad political support for the simplification of regulation

All across the political spectrum, there is wide support among the governments in the EU for smart and better regulation. It sounds sensible to cut unnecessary red tape. In this connection, the trade union movement faces the challenge of convincing decision-makers in the EU and at the national level that the protection of fundamental rights cannot be seen as a burden.

At a time when unemployment is high, it is highly problematic that the focus is not on growth initiatives but that exemptions and easing of rules are seen as the solution. Small and medium-sized companies constitute more than 90 per cent of all companies in the EU. Exemptions are therefore not the solution to reducing unnecessary burdens.

The role of the trade union movement in the political debate

The European trade union movement faces the obstacle that it often appears inflexible and eager to preserve rules. The trade union movement cannot keep rejecting every proposal for cutting red tape and simplifying of rules. There ARE examples of unnecessary rules that complicate the existence of entrepreneurs and small businesses. However, after years of not giving any attention to this issue, the ETUC has now taken an approach according to which all proposals for simplification of regulation or refit are dismissed in advance.

The discussion on minimum directives constitute an independent challenge. In spite of fact that minimum directives allow for the member states to freely establish higher requirements or higher standards, the terms "gold plating" or "over-implementation" are often applied. These expressions are also used in cases where countries are implementing directives on minimum standards. A number of measures are in the pipeline with a view to allowing the Commission to see how directives are implemented in the member states - among other things to assess whether or not some countries "over-implement".

Strategic possibilities for the Danish and European trade union movements

It is necessary that we, in the Danish trade union movement, discuss the issue of simplification of regulation and cutting red tape. It is important to underline that the trade union movement is not against reducing administrative burdens for companies in order to strengthen their competitiveness.

In order to ensure that smart implementation of the directives does not take place in a way that reduces the level of protection of the employees in small companies' alliances can be made with the environmental- and consumer organisations since a number of the proposals are in areas that affect their interests. Furthermore, in a number of cases, alliances can be made with UEAPME - the umbrella organisation for small and medium-sized companies in the EU - since this organisation is also very critical towards the disregard of social dialogue.

Proposals for solutions

It is important that the trade union movement shows that it is willing to help promote competitiveness among small and medium-sized companies in the EU while also ensuring that the simplification of rules does not take place at the expense of the protection level. In order to meet this objective, it is necessary to work concurrently on a number of strategies:

- The adoption of general passage stating that simplification of rules shall not take place at the expense of the level of protection. In addition to that, it is necessary to work on a case-to-case basis depending on which directives are subject to measures to simplify legislation and any exemptions for micro companies.

- Emphasis should continue to be placed on the legal arguments when it comes to gold plating and minimum directives as well as on the issue of whether or not workers' level of protection can be lowered depending on the size of the company in which they work.
- Safeguarding the social dialogue is a challenge in itself. Every time there is a proposal that interferes with the social dialogue we must resist. Close contact must be maintained with the government group in order to counter Great Britain for example when they present proposals in areas that are up to the social partners to negotiate.
- Finally, it should also be verbalized that social dialogue and European level agreements contribute to strengthening the simplification of rules and its implementation.

In any circumstances, it is necessary that the European trade union movement takes the issue of smart regulation seriously; whether it be presented as better regulation, refit or other paraphrasing, and that, it monitors the development closely and coordinates efforts in this connection.

Priority should be given to national-level efforts to influence the Civil Service and coordination with the trade union movement in the Nordic countries who are already giving a lot of attention to this area. Furthermore, more alliances must be forged with employers who do not want a differentiated regulation.

5. The social dialogue and the social partner's influence are under pressure on the labour market.

Background

The social partners have extensive access to influencing EU-legislation in the areas of social- and labour market policy. However, the social dialogue in the year 2016 needs some oxygen. The past few years, not many initiatives have been taken to enter into new agreements or issue new directives.

The financial crisis and its severe repercussions in the form of growing unemployment and rising poverty have affected the social dialogue negatively. The Commission has stated that it will give priority to the social dialogue and the Commission is composed so that Vice President Dombrovskis has the overall responsibility for the euro cooperation and the social dialogue.

The Commission has attempted to take on an approach by which by which it, on the one hand wishes to implement extensive structural reforms of the labour market and, on the other hand, invites the social partners to enjoy greater influence. This approach is well known on our national scene, but it meets resistance and great scepticism from the southern European countries.

The state of the social dialogue

The special status of the social partners as established in the treaty is being challenged. The Commission prefers broad consultations where a number of stakeholders are consulted on matters in which, according to the treaty, the social partners have a special status in connection with consultation. Specifically, central consultations in advisory committees are wholly or partly being replaced by internet consultations where individuals are put on the same footing as the social partners.

The number of directives etc. on which the European social partners reach agreement has dropped markedly during the past few years and, in an increasing number of cases, the Commission chooses to establish specific expert groups without the involvement of the social partners. These expert groups are legitimised by an increasing complexity of the legislative work. The expert groups are tasked with driving forward a political process in cases in which it has been difficult to find political consensus via the classical treaty-based channels.

Challenges

With the financial crisis, there has been increasing pressure to implement reforms that will free up resources here and now. A number of the economic reforms that we have seen in EU member states are in direct response to the EU's austerity requirements - requirements that have introduced without consulting the social partners. This includes a lack of consultation in countries that have introduced reforms that have led to marked deteriorations of wages and working conditions.

Political influence via social dialogue and tripartite negotiations

Both at the national and the European level, the social dialogue is thus under pressure. This goes both for the social dialogue between the social partners and between the social partners and the governments. In a number of EU member states, key labour market reforms have been implemented without

the involvement of the social partners. There are even examples of reforms contributing directly to undermining an agreement-based solution. The combination of the need for quick action and sweeping reforms has, to a certain extent, generated economic results; however, it has also created social unrest and political instability in a number of EU member countries. This development has not strengthened support for the European project among the public.

A vital precondition for obtaining optimum influence via the social dialogue is that there is an interrelation between the social partners' political priorities and those of the Commission. This is, not least, reflected in the working programme of the social dialogue.

The working programme of the social partners 2015-17

In 2016, the social partner have negotiated a framework agreement on active ageing and intergenerational solidarity. The demographic challenge and the continued very high youth unemployment makes it necessary to ensure that older workers can stay longer on the labour market while also making a great effort to ensure that the young generation can take over once other workers retire. In addition to this, the social partners agree to strengthen the social dialogue in countries where it is weak.

Danish and European regulation

Meanwhile, even a strengthening of the trade union organisations and the social dialogue does not alter the fact that labour market regulation at the EU-level is based on a legal base which rests on central legislation that provides individual rights. This is in stark contrast to the Danish agreement-based model, which provides collective rights. The clash between these two traditions is reflected in a number of EU-decisions according to which the right to industrial action has often yielded to the principle of freedom of competition.

Another challenge when it comes to the agreement-based model is that, in accordance with article 137-138 of the Lisbon treaty (voluntary autonomous agreements), European agreements are implemented through collective agreements in Denmark. This means that employees in the private sector of the labour market who are not covered by a collective agreement will not have obtained the same rights as those agreed in the European agreement (one specific example of this is the European framework agreement on telework).

Strategic possibilities for the Danish and European trade union movements

The EU member states in which social dialogue is traditionally strong have fared better during the crisis than their neighbouring countries. A well-functioning social dialogue is therefore indispensable if the EU and its member states are to meet the challenges we are facing. Among other things, we are facing an ageing society with fewer young people and a growing elderly population.

It is vital that the social partners continue to be involved and exert their influence on reforms of the labour market of the future, labour market regulation and, not least, the economic framework for this policy development - nationally as well as at the European level - in order to ensure influence on as well as support for and ownership of these reform.

Furthermore, the treaty basis (article 153, 5 of the treaty) establishes that negotiations on pay is a national competence. Meanwhile this basis has been challenged by the European crisis management policy.

Finally, it is important to the social dialogue in future, at both the EU-level and the national level, that the membership of the trade union organisation is strengthened and that the employers are organised and represent a broad range of national businesses.

The Danish trade union movement should discuss which channels to use to ensure optimum political influence on key policy areas. The three key channels for obtaining political influence on EU-affairs are;

- Indirect influence via the ETUC and other European trade union organisations that organise industries and professions such as EPSU, EUROCADRES, IndustriALL, UNI Europa³.
- Indirect influence through special committees on EU affairs in the Danish parliament (Folketing) and The European Affairs Committee of the Folketing, Ministers, etc. i.e. influence the Danish political arena.
- Direct influence via contact with The European Commission and The European Parliament.

Danish and European regulation

In future, it is necessary to bridge the gap between the European and the Danish law-making traditions in order to reduce the number of cases and EU-decisions that come into conflict with the Danish agreement-based system.

Since Germany introduced the statutory minimum wage in 2015, Denmark is under added pressure when it comes to maintaining the stand that wages are negotiated in collective agreements.

If the European agreement-based model is to work, this requires employers who are able to help ensure that European agreements are implemented at the national level. If it is not possible to obtain a national effect from European agreements for the workers that the social partners represent, then it will contribute to undermining the legitimacy of the European social partners and the social dialogue.

Proposals for solutions

It is a precondition if the solution models are to work that the national social partners continue their work to ensure a high level of legitimacy for the social dialogue through broad, national representativity (a high unionisation rate and broad collective agreement coverage).

There has been a lack of trust between the European social partners, which again reflects on a lack of trust at the national level. The coming negotiations will tell whether a more trusting cooperation can be re-established.

³ Organisations that represent public sector employees, professionals and managers, industrial workers, services etc.

6. The possibilities of the Danish trade union movement to influence the EU

As much as 70% of the Danish legislation stems from the EU, and there can be no doubt that exerting an influence in the EU will only become increasingly important.

The Danish trade union movement coordinates its efforts to work together as well as independently in each central organisation. The Danish Trade Union Office in Brussels is our auxiliary arm.

The work to influence the proposals of the Commission's go both via the ETUC, i.e. by influencing the ETUC's attitudes and strategy and, not least, by participating in negotiations and enter into agreements under the auspices of the social dialogue. Finally, it takes place more directly vis-à-vis public servants in the Commission.

There will, in a number of cases, be shared interests and opinions among the Nordic trade union organisations. Although NFS is mainly tasked with Nordic issues, it is evident to cooperate and coordinate efforts in areas where there are particular, joint Nordic interests in relation to the EU or the ETUC. There may also be areas that affect the Nordic agreement-based labour market model.

Efforts to influence EU affairs are also carried out at the national level. This takes place through participation in the special committees in Denmark. Here, it is possible to be briefed ahead of the Council meetings and prepare consultation responses in relevant areas. It can also be in the form of contact with and influencing members of the European Affairs Committee of the Folketing, and, finally, the relevant Ministers.

The Danish trade union movement also carries out lobbying in the European Parliament, meeting with Danish MEP's in particular and their assistants in order to exert influence.

There are thus many roads to obtaining influence on EU affairs. No one way of obtaining influence can stand alone. For each case, it will be necessary to work on more fronts than one. Which front to approach will depend on the case at hand, which stage the case is at, and finally, whether the interests we are lobbying for are purely Danish or Nordic, or whether it is a common cause with the European trade union movement.