REDUCING PRECARIOUS WORK IN EUROPE THROUGH SOCIAL DIALOGUE

THE CASE OF DENMARK

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Contents

Executive Summary **5**
The nature of 'Protective Gaps' in the Denmark 6
How do *Protective Gaps* apply to different types of precarious work? 8
The role of social dialogue in closing protective gaps 10
Case studies of distinct forms of social dialogue addressing precarious employment 10
Part 1: Overview report of Protective gaps and the Role of Social Dialogue **12**
Chapter 1: Introduction **12**
Chapter 2: General description of the Danish labour market **14**
The collective agreements 14
Legislation 18
Social security and social protection 20
Summary – the Danish labour market and precariousness 21
Chapter 3: Precariousness in the less organised parts of the Danish labour market **23**
Self-employed workers 30
Summary 31
Chapter 4: Less than guaranteed full-time hours **32**
Part time employment 32
Gaps 35
Summary 37
Chapter 5: Temporary work **38**
Fixed-term contracts 38
Gaps 40
Temporary Agency Work 42
Gaps 45
Summary 46
Chapter 6: Cost-driven subcontracted work **48**
Rules and regulations 49
Posting 49

The construction sector 51
Other sectors affected by cost-driven subcontracting 52
Summary 53
Chapter 7: Conclusion 55
References for part 1 56
Part 2: Case studies of Social Dialogue initiatives targeting precarious work in Denmark 60
Chapter 1: Introduction 60
Chapter 2: Case study 1: The use of labour clauses in public procurement 64
Introduction 64
Labour clauses and public procurement in the Danish public sector 65
The potential clashes between labour clauses, the Danish IR-model and EU legislation 66
Labour clauses and public procurement – the case of Copenhagen 67
Sector analysis – construction 69
Introduction to the sector 69
The application of labour clauses in the construction sector in Copenhagen 70
The outcome of the application of labour clauses 71
Sector analysis – Industrial Cleaning 73
Introduction to the sector 73
Labour clauses and industrial cleaning – the Case of Copenhagen 75
The effects of labour clauses 78
Summary 79
Chapter 3: Case study 2 – Organising labour migrants 81
Organising migrants to reduce precarity ..... **Error! Bookmark not defined.**
Migrants and precarity in Denmark 81
Types of migrants – and the prospects for union recruitment 83
Case Studies – organising in the fishing industry and construction 84
Case study: Organising in the fish processing industry in Northern Jutland 84
Case study: Organising in larger construction sites 86
The union strategies on organising migrant workers 86
Summary - Lessons learned in organising migrant workers 88
Chapter 4: Case study 3 - Social partner responses to temporary agency work within manufacturing 90
Introduction ..... **Error! Bookmark not defined.**
Recent development in Temporary Agency Work in Denmark 91

Collective agreement coverage, membership of employers' associations and unions 92
Wages and working conditions among TAW within manufacturing 93
Social partners responses– the case of their joint task force 94
Implementing social partners' Joint task force – take up rate and lessons learned 96
Developing common procedures and practices at sectoral level 96
Take-up rate and lessons learned 97
Company based responses to TAW 98
Summary – the effects of social partners' joint task force at company level 99
Chapter 5: Discussion and Conclusion 101
Social partners' position and precarious employment - variations across sectors 101
Forms of social dialogue, their effects and the lessons learned 102
Unilateral actions – Danish unions organizing migrant workers 102
Bipartite social dialogue – Dealing with TAW within manufacturing 103
Tripartite consultation 103
References for part 2 105

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Part 1: OVERVIEW REPORT OF PROTECTIVE GAPS AND THE ROLE OF SOCIAL DIALOGUE, by Stine Rasmussen, Bjarke Refslund and Ole H. Sørensen

Part 2: CASE STUDIES OF SOCIAL DIALOGUE INITIATIVES TARGETING PRECARIOUS WORK IN DENMARK, by Bjarke Refslund and Trine P. Larsen

Executive Summary

This report consists of two parts. The first part of the report identifies and discusses challenges related to precarious work in Denmark. The second part of the report explores how social dialogue can help reduce precarious wage and working conditions on the Danish labour market by drawing on three distinct case studies – each dealing with different aspects of various protective gaps and examining how social partners have handled such challenges through distinct forms of social dialogue.

Although the Danish model is challenged by liberalization and a Europeanizing and globalizing economy, the protection available to workers in both 'standard' and 'non-standard' forms of employment is relatively high, but the report identifies sectors that are under threat from economic restructuring and changes in the legal and regulatory environment. The decline in collective forms of employee representation that has been experienced in many European countries has also affected Denmark, but the union density is still comparatively high at about 67 per cent and coverage by collective agreements is even higher at 84 per cent. However, certain sectors have much lower density and coverage and the main challenges are concentrated there along with sectors highly exposed to international competition including competition for work. The influx of migrants with different expectations and experiences than Danish workers and foreign firms with different cost structures and collaboration practices challenges the IR-model especially in the less organized sectors. However, the Danish IR-model is also recalibrating, closing gaps and implementing regulation in areas where the threats are most salient.

This Danish interim report is one of six country reports commissioned for a wider European research programme, 'Reducing Precarious Work in Europe through Social Dialogue', funded by the European Commission (*VP/2014/004*). It represents a first stage in a 24-month research project, to be followed in September 2016 with a second part that details the findings from detailed case studies of precarious employment experienced in different organisational contexts and supply chains.

This interim report has three main objectives:

- To identify the 'Protective Gaps' in the Danish economy and labour market
- To explore how these gaps impact upon different groups of precarious workers
- To identify key areas where social dialogue may play a role in reducing Protective Gaps

The first part of the report consists of 7 chapters. Chapter 1 introduces the study and the report. Chapter 2 provides a general description of the Danish labour market. Chapter 3 identifies precariousness in the less organised parts of the Danish labour market. Chapter 4 describes gaps related to work with less than guaranteed full-time hours such as part-time work. Chapter 5 looks at temporary work. Chapter 6 discusses cost driven subcontracted work and the different impact in more or less organized sectors of the labour market whilst chapter 7 sum up the main findings of the preceding chapters

The second part of the report consists of three case studies which each explores how Danish social partners through various forms of social dialogue – unilateral, bipartite and tripartite actions – have addressed the various risks of precarious wage and working conditions on the Danish labour market. The second part of the report consists of 5 chapters. Chapter one introduces briefly the three case studies, including the various protective gaps which social partners through distinct forms of social dialogue have relied on to

address the various risks of precarious employment. Chapter 2,3,4 consists of the three case-studies. Chapter 2 deals with the usage of labour clauses in public procurement, where we examine the implementation of such labour clauses and their effects in terms of ensuring wage and working conditions according to the standards outlined in the collective agreements and Danish labour law, using the municipality of Copenhagen as the empirical example. In this context, we analyse two specific sectors – industrial cleaning and construction - as they are the two main areas together with transport, where the municipality of Copenhagen has applied labour clauses in public procured work. Chapter three concerns with Danish trade unions' efforts to organise labour migrants, in particular unions in construction and 3F (the main union mainly organising lower-paid manual workers in construction but also other areas). The case study involves mainly the perspective of unions as well as the employees facing increased risks of precarious wages and working conditions, which in this case is the labour migrants. Chapter four explores the recent development of temporary agency work (TAW) within Danish manufacturing and how social partners jointly have dealt with the associated risks of precarious working conditions among temporary agency workers at sectoral and company levels, respectively. Chapter five discusses and sums up the main findings of the three case studies.

The nature of 'Protective Gaps' in the Denmark

This report uses an analytical framework of 'Protective Gaps' that was developed in the UK report. It focuses on four protective gaps: employment rights gaps, representation gaps, enforcement gaps, and social protection and integration gaps. The analyses on the report draw on primary interview data and secondary data drawn from previous research, policy documents, labour market data, and relevant websites.

i) Employment rights gaps

Standard employment rights in Denmark are determined by the collective agreements with backup in legislation and are set at a relatively high level compared to other European countries. Moreover, there is relatively high scope and incentives for employers in collaboration with employees to improve, coordinate and integrate rights.

There are few statutory ***minimum standards*** such as the Holydays Act, the Act on Working Environment, the Employment Contract Act, The Equal Treatments Act, The Equal Pay Act, the Act on Working Time, and Employers' and Salaried Employees' Act. However, most of the working conditions are determined in the collective agreements and in many areas there are no statutory backup rights, such as for minimum wage, normal working hours, and more. Standard employment conditions are therefore determined by collective agreements and it varies between sectors with different needs, but also reflects historical differences between the sectors. The minimum standards have greatest effect in areas with low coverage of collective agreements, but the statutory rights do not, as in many other countries, provide a 'ceiling' or a 'floor' for employment conditions. However, the general and relatively generous flexible welfare system provides a de facto 'floor' for which working conditions workers in Denmark are willing to accept. The flexibility of this system includes relative short notes of dismissal, but this is generally not perceived as a problem of precariousness because of the welfare benefits ('flexicurity').

Most categories of workers are ***eligible*** for basic statutory protections including those engaged on fixed-term and agency contracts (with the exception of self-employed workers) because the collective agreement coverage is so high. Eligibility for some employment rights such as maternity and sick leave pay is contingent on minimum thresholds for continuous employment. Most collective agreements take that into account, but in areas outside of agreements and in were flexible work such as agency work and construction, some workers on low hours or short-term contracts may struggle reach adequate levels.

The scope for regular and consistent ***upgrading*** of employment rights is relatively large; regular negotiations between the social partners and a range of intermediary collaborative institutions (education, working environment, etc.) secures upgrading in terms of closing gaps, but also in terms of making the regulatory requirement fit the needs of the workplaces in the particular sectors. Collective worker representation is wide in scope and follows a pattern of central-decentralised in the private sector, meaning that localised improvements in standards always have a backup in industry or sector agreements as a fallback option and for central areas, the social partners should be notified when local agreements deviate from central agreements. ***Integration*** between employment rights for different types of workers has largely been achieved, which means part-time, fixed-term and temporary workers for example enjoy the same protections as full-time employees. However, there are some gaps: the qualifying period of continuous employment in some cases limit agency workers' entitlement to equivalent standards as permanent staff; cost-driven outsourcing dilutes standards across the supply chain; and bogus self-employment is emerging as an employment form that substitute for standard employment conditions stipulated in the collective agreement and it seems to be especially salient for migrant groups.

ii) Representation gaps

Although ***institutions*** such as trade unions, collective bargaining structures, and joint consultative committees has declined significantly over the last decade in the Denmark and 7 % have become members of unions that do not negotiate collective agreements, the protection of workers has not been weakened because membership rates are still high. However, some sectors such as horticulture, hotels and restaurant and cleaning have lower rates and a substantial part of the workers are not covered by collective agreements. There are no formal differences in the ***eligibility*** of different groups of workers for representation, but in practice certain groups such as migrant workers are much less likely to be covered by agreements or to get the right terms stipulated in the agreements. Trade unions have attempted to ***involve*** vulnerable and precarious workers through organising campaigns with some success and the social partners have also with help from legislation developed systems that put pressure on e.g. foreign companies to sign agreements such as the RUT-register and the 48 hour meetings in the construction sector. The legality, practice, and acceptance of secondary industrial action are key levers. However, a few areas such as horticulture and bogus self-employment seem to escape these initiatives especially at the expense of migrant workers. However, there is a ripple effect that is also felt in the organized part of the sectors. It is also evident that representation gaps exist in the sectors with low coverage, for migrants, and for temporary workers because when the collective agreements defines standard conditions, there need to be someone locally that knows when the conditions in the agreements are breached, and local representation by shop stewards is much lower in the sectors and for these groups.

iii) Enforcement gaps

It is evident that the ***enforcement*** of collective rights depends on the strength of the social partners whereas the individual legal rights also depend of public enforcement agencies such as the Working Environment Authorities. As it was the case with the previous gaps, enforcement gaps especially exists in lowly organized sectors and for specific groups such as migrants, agency workers, and workers on temporary contracts. Although the unions arrange special taskforces (sometimes with the employers), the government agencies inspect conditions, and collaborative bodies produce information materials, the Danish system also depends on local activism to detect and report lack of enforcement. The gaps are greater for precarious groups which increases their risk of continued vulnerability. However, compared to other European countries the level of local representation is much higher. The social partners in Denmark are generally sceptical of having central government bodies oversee and check whether local conditions live up to the standards because there is a risk that this will lead to lower autonomy in the long run. Therefore, much effort is generally put into increasing workers ***awareness*** of rights and the channels of ***power*** to challenge employer practices. This has proved to be a challenge for migrants. Furthermore, workers have a tendency to shy away from reporting and using channels of power if they are easy to replace or dismiss, which is often the case for agency workers and migrants.

iv) Social protection and integration gaps

The *eligibility and entitlement* of workers to social protection is for unemployment benefits contingent on hours worked and the ***contribution*** made to the unemployment insurance system. Social benefits are contingent on level of household incomes, expenses and size. Welfare reforms have reduced the extent of these entitlements over the last 15 years (e.g. shorter eligibility periods and higher requirements to become eligible). From the perspective of ***integration,*** variable and insecure working hours and working periods attached to fixed limited time contract means that some workers face challenges in accessing social protections. This is especially salient for self-employed, temporary agency workers and other workers on short, temporary contracts; however, it concerns a relatively small group.

How do *Protective Gaps* apply to different types of precarious work?

Precarious forms of employment redistribute risks of insecurity from employers to workers. The report identifies protective gaps for four types of precarious employment.

1) Standard employment relationship

The interviews conducted in the project indicated that the Danish IR-model, where the standard employment relationship is open-ended contracts with conditions primarily determined in the collective agreement, is challenged by liberalization especially in terms of free movement of labour in the EU. However, all interviews pointed to initiatives that closed gaps though improvements in the collective agreements, more initiatives related to enforcement and awareness. The main reasons given for negative developments were decreasing or low union power in a few sectors and employers opting-out partly or fully of the established collective agreements, lack of knowledge of rights, and groups with low expectations or fear of repercussions.

In a few sectors, such as hotels and restaurants, the minimum level of conditions offered in the collective agreements is difficult to distinguish from what other sectors would find unacceptable and maybe even

precarious. However, the unions in the sector accepts the conditions because they reflect the character of the work in the sector, and the agreements offer more orderly conditions than what would have been possible without an agreement. It is not considered a serious problem, because many jobs are taken by students, who also have a free state-financed student grant.

2) Less than full-time guaranteed hours

Part-time work is well covered in the Danish collective agreements and has typically similar rights as full-time workers. There is little evidence of severe gaps and about 80 % is voluntary. Part-time is dominated by women who take a somewhat larger responsibility for domestic work, but most part-time is related to education or training. Part-time employees are overrepresented in certain parts of the less regulated labour market, where the collective agreement coverage is lower. There is a slightly larger representation gap for part-time employees than for full-time employees. There are few in-work regulatory gaps: a somewhat smaller proportion of part-time employees have access to labour market pension and training than full-time employees. Social protection gaps are also few, as part-time employees can receive unemployment benefits in case of unemployment. However, a few collective agreements allow part-time employment with hours that does not qualify for unemployment insurance and outside collective agreements there is no protection. For the group of part-time employees who work very short hours, more severe gaps exist. If the weekly working time is below 8 hours over a period of one month, employees are excepted from the collective agreements and the legislation and do not have access to pension, pay during sickness, etc.

3) Temporary work

Temporary workers (including agency workers and fixed-term contract employees) may find themselves excluded from formal rights and entitlements (or even written conditions of employment) due to the limited duration of their employment contracts. Although temporary agency work is well regulated with the majority being covered by collective agreements, there are still some gaps compared to the standard employment contract. One issue is non-equal treatment and another is lower access to rights and benefits depending on seniority such as labour market pension, the sixth holiday week, pay during sickness and leave, the right to child's first sick day, lower access to education and training, etc. Agency workers who move between different temp agencies are especially vulnerable. Examples are also found of less favourable wages and working conditions, where such positions are often held by foreign employees. When it comes to union membership and membership of an unemployment insurance fund there is evidence of representation and social protection gaps for a smaller group of TAWs.

4) Cost-driven subcontracting work

Cost-driven sub-contracting affect employees because the long and complex supply chains sometimes obscure the employment relationship and make it difficult to establish and enforce an employer's social and legal responsibilities for meeting worker rights and employment conditions. The effect of cost-driven sub-contracting varies a lot depending on the coverage of agreements and the strength of unions. In the most affected sectors, there are social protection and integrations gaps and conditions that are unacceptable for most employees with an origin in Denmark. ***Bogus self-employment*** is another way in

which employers can avoid the conditions in the collective agreements and there are indications that the systematic use of this construction is increasing in certain sectors such as construction.

The role of social dialogue in closing protective gaps

Social dialogue understood at the dialog between the trade unions, employers' association and public regulatory institutions is quite well developed and the report mentions several examples where social dialogue has closed different types of gaps. The most eminent need of improvements seems to be ***implementation of standards*** in weakly organized sectors, for migrants and foreign companies, and for temporary work.

Case studies of distinct forms of social dialogue addressing precarious employment

The three case studies explore how Danish social partners through distinct forms of social dialogue – unilateral actions, bipartite collective bargaining at sectoral and company level and tripartite consultation – have developed various responses to the risks of precarious employment facing employees in different parts of the Danish labour market. The specific case studies concentrate on specific parts of the Danish labour market such as construction, industrial cleaning, fish processing industry and TAW within manufacturing – each sector having witnessed different challenges of precarious work, when measured in terms of wages, working hours, social benefits, job and employment insecurity, representation and collective agreement coverage.

Unilateral actions – Danish unions organizing migrant workers
Danish unions approach to organizing has been more pro-active in recent years and has among others targeted migrant workers within the fish processing industry and construction. The case study suggest that the union's success often depends on their ability to 1) build trust based relations with the migrant workers, 2) prove they can make a difference to the migrant workers' wage and working conditions as well as 3) strong union presence at the workplace, which often require some form of collaboration or social dialogue with the employers in terms of securing unions' access to the work sites and thereby access to the migrant). Also if the company is without collective agreements, it entails that the union engage in some form of social dialogue with the employers in order to secure a collective agreement – a process that is not always a smooth ride, but can be lengthy, conflictual and include involvement of the wider community and the media as illustrated in our case study from the fish processing industry. Our case study on union's attempts to organise migrant workers within demolition also reveal that the unions often target larger building sites, whilst remote and small and medium size building sits tend to be overlooked, as they often are difficult to access for the unions, even if might be here that we find some of the most vulnerable workers within construction.

Bipartite social dialogue – Dealing with TAW within manufacturing
Social partners within Danish manufacturing have increasingly dealt with the challenges arising from the increased usage of TAW by developing joint responses through the collective bargaining system at sectoral and company levels. Their joint initiatives covers a series of responses that aim to improve the wage and working conditions of temporary agency workers and thereby implicitly reduce the risks of precarious

employment. Our findings also suggest that social partners have developed novel ways of social dialogue at sectoral and company level with examples of manufacturing companies having set-up workplace committees with representatives from the unions, temporary work agencies and the user company in order to address the various challenges related to TAW at the company. Our case study also explored the implementation of one of the most recent initiatives by social partners within Danish manufacturing; i.e. their joint task force aimed to assist social partners at company level with information on the various options for flexibility within the collective agreements, including the usage of TAW. Our findings suggest that only few companies have exploited the services offered by the joint task force, indicating that the arrangement to some extent has failed. Unawareness partly accounts for the limited take-up rate, but the main reason as to why shop stewards and local management had not contacted the joint task force for assistance was often that they preferred to solve the issues at hand without involving outsiders such as social partners at sectoral level. However, the case study also suggests that in some instances the task force have served as inspiration on possible ways to move forward at company level, although the visits of the task force rarely solved the various deadlocks dominating the local bargaining process.

Tripartite consultation – developing labour clauses in public procurement

The case study on the usage of labour clauses in public procurement in the areas of construction and industrial cleaning is an example of tripartite consultation lead by public authorities – in our case the municipality of Copenhagen -, but involving trade unions and employers associations in different stages of the policy process. Unions in particular have pushed for including labour clauses in public procured work whilst employers have opposed the very idea of labour clauses. Our findings reveal that the municipality of Copenhagen has formalised the collaboration with social partners through the set-up of social dialogue forums in the areas of construction, industrial cleaning and within housing as well as appointed an external and independent auditing firm to ensure private contractors' compliance with the labour clauses. The formalisation of their tripartite consultations with social partners is - similar to the appointment of an external and independent auditing firm - rather novel in Danish context, even if most Danish municipalities – 90 per cent - use labour clauses in public procurement when it is considered appropriate. In addition, our case study points to that particular the appointment of the independent auditing unit including the close collaboration with trade unions and employers associations have been rather favourable to ensure private contractor's compliance with the labour clauses. Indeed, relatively few of the risk-based inspections conducted by the independent auditing unit – 7 per cent – have led to further investigation and infringement cases.

Part 1. Overview of Protective gaps and the Role of Social Dialogue

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1. Introduction

This report deals with precarious work in Denmark and is a part of the international research project 'Reducing precarious work in Europe through social dialogue' funded by DG Employment, Social Affairs and Equal Opportunities. The report deals with various forms and typologies of employment in Denmark and discusses the extent to which these forms of employment are precarious. The report also addresses current developments in precarious employment in the Danish labour market. This includes among other things an identification of which forms of protective gaps, these employment types suffer from in terms of in-work regulatory gaps, representation gaps, enforcement gaps and social protection and integration gaps, which are four forms of gaps identified in the project. The report also describes how different forms of social dialogue has already reduced the precariousness of certain forms of employment in Denmark, for instance in the construction sector.

The report is based on a number of different sources. First of all it consists of a review of existing studies analysing atypical and/or precarious employment in Denmark. Secondly, 12 interviews have been conducted in the period from May to November 2015. Two of them are with researchers with thorough knowledge on precarious work (Trine P. Larsen, Copenhagen University and Steen Scheuer, University of Southern Denmark), who authored several key studies cited in the report. The rest are with representatives from the social partners. From the employers' side, interviews have been conducted with The Confederation of Danish Employers (DA), who represents 14 different employer organisations, The Danish Construction Association (DB), an employer organisation in the construction sector, GLS-A, an employer organisation in agriculture and the private service section in the Confederation of Danish Industry (DI). From the side of the employees, interviews have been conducted with both unions (HK, The Service Workers Union and several segments of 3F, United Federation of Danish workers), who mainly organises low-skilled workers) and central organisations or other corporations representing a number of unions (LO, The Danish Confederation of Trade Unions, FTF, The Confederation of Professionals in Denmark and Forhandlingsfællesskabet, which is a bargaining cooperation for employees in the municipal sector).

The report begins with a more general description of the Danish labour market in order to give an understanding of how the terms and conditions of employment are regulated at a general level and how the workforce is protected in terms of social security (Chapter 2). As will be described in the following pages, certain parts of the labour market in Denmark - in particular the private - remains rather unregulated (or at least less regulated) in the sense that there are low collective agreement coverage and low levels of organisation for both employees and employers. In a Danish context it can be argued that precariousness is mostly connected to these parts of the labour market, because of the lower degree of regulation and lower presence of the social partners to ensure decent wages and working conditions. This also applies at the industry level, where some industries – like hotels and restaurants and agriculture - are much more exposed. Chapter 3 will therefore deal with precariousness at these parts of the labour market. Because several forms of precarious or exposed employment exist here, the chapter will not be restricted to one type of employment as is the case in the subsequent chapters. After that the report will concentrate on specific types of employment - less than full time hours (chapter 4), temporary work (chapter 5) and cost driven subcontracted work (chapter 6). For each type of employment a description is made concerning the rules and regulations followed by a discussion of the gaps and the severity of the gaps for this form of work. The report ends with a conclusion, where they main points are summed up (Chapter 7).

2. General description of the Danish labour market

At the Danish labour market the terms and conditions of employment are regulated through a mixture of collective agreements and legislation, but with legislation often taking a second tier position either as framework law or by securing workers who are potentially not covered by collective agreements in the first place. There is a strong tradition for voluntarily bargaining between the trade unions and the employer associations, where the social partners agree upon the terms and conditions for employment through collective agreements e.g. wages without the state intervening. This tradition and the strong positions of the social partners where they have mutual respect for each other's position have meant that a rather strong consensus have developed in the Danish labour market. The political system as well as the labour market also has a significant corporatist tradition and although the number and influence of corporatist agreements and committees have declined over the last decades (Larsen & Jørgensen 2013) numerous elements of the corporatist tradition still prevail. Also, since the early 1990's the Danish labour market has gained international interest due to the high flexibility for employers combined with strong income security, mainly unemployment insurance benefits, as well as active labour market policies especially labour market training. These elements combined have become known as the Danish flexicurity model.

These features of the Danish labour market will be described in more detail in this chapter. First, the system of collective agreements and actions, which are a key element in the Danish labour market, is described. Second, the most relevant labour market legislation is described. Third, the different forms of welfare services that give social security and protection to the citizens are introduced and discussed. The chapter ends with a brief outline of where precariousness is most likely to be found in a Danish context, before chapter 3 discusses this in more details.

The collective agreements

The Danish tradition for regulating wages and other key aspects via collective agreements has a long history (since 1899) and bargaining institutions are highly institutionalised. The labour market system is relatively consensual, albeit still with re-occurring industrial conflicts. A key element of the Danish labour market is the presence of strong and representative social partners – namely, trade unions and employer associations. For the employees, the organisational level representation is very high in an international perspective, but this has declined during the last decades. Union density peaked in 1983 when 80.8 % of the workforce was union members. In 2014, this figure had declined to 68 % (DA 2014). Another characteristic feature is the unity of the Danish union movement. While there are numerous unions – mainly organised after trades – they predominantly act as a coherent movement and mostly avoid competing with each other over members and agreements. Almost all unions are organised into three main confederations (the traditionally blue-collar workers in LO, the academics in AC and most public sector employees in FTF). Although there occasionally are disputes over organisational settings – sometimes within companies – the unions by large have a unitary approach to the Danish labour market. Hence, it is difficult for the employers to play the unions against each other. This unity also applies at work place level where there only is a single-channel of worker representation as opposed to many other countries. The Danish "cooperation system" normally consists of a cooperation committee and a worker-elected shop steward at the work sites. If a company have signed a collective agreement and has more than 35 employees (for public companies <25) there have to be a cooperation committee with equally

representation from employers and not-leading employees and normally the shop steward or other worker representatives are born members of the committee. The cooperation system is regulated in an agreement between LO and DA (Samarbejdsaftalen) and applies only to companies with a collective agreement. A majority of Danish companies also have a shop steward especially the larger work sites, whereas it is less common in smaller work sites.

Within the last decades, there has been a sharp growth in so called "*yellow unions*" or ideological alternative unions that are not member of one of the three union confederations and do not take industrial action and some of them do not sign collective agreements.

In the public sector all employers are members of employer organisations and for employers in the private sector the degree of organisation is about 58 % (measured as how large a share of the workforce who is employed in a company who is member of an employer organisation). Employers' organisation rates have increased in recent years (Ibsen 2014:126) but has historically been a little below the European average (Jensen 2007:202-204).

The collective agreements reached between the unions and the employer associations in the collective bargaining rounds settles most conditions on wages and working conditions. In general, the agreements have stipulations about working time, overtime work, minimum wages, terms of notice, pension and representation at the workplace. Today, the majority of collective agreements are negotiated at sector level with typical two or three years' interval, but most collective agreements also include local negotiations or room for adjustments within the overall agreed framework. If there is a local agreement within the collective agreement it has to be approved by the sector level organisations to be valid, and if one of the parts wants to get out of local agreement, they can always opt out and return to the sector agreement. If there is a signed collective agreement, then the social partners have a peace obligation in the agreement period, so it is only legal to strike when the collective agreement have to be renewed or when there are negotiation with a company without collective agreements.

However, wildcat strikes may occur between the renewal periods, but this has been declining and occurs on an international low level. If a company does not have a collective agreement, the unions will typical try to force the company to sign an agreement by at first issuing a strike warning. If this does not lead to an agreement they will initiate a strike. If there are unionised workers in the workplace they will typically strike, however there do not have to be unionised workers at the company. Sympathy or secondary industrial action can also be initiated, both if there are workers striking in the companies, but also if there are no unionised workers in the company. If a firm is involved in an industrial conflict, the unions can include workers from other companies in the strike to prevent normal operations e.g. transport and maintenance workers. Since this way to archive collective agreement coverage can be rather resource demanding, it is impossible for the unions to approach all firms in industrial action – especially small and remote firms. So the unions target strategic companies and many agreements are signed without any conflict – often not even a strike warning, but in a dialog between the company and the unions and also the employers' association if the company in play is a member of the employers' association.

The collective agreements give rights to all employees within a certain area, also employees who are not union members (Jørgensen 2014:18). The agreements also cover all wage earners working within the agreement. This means that the agreements not only apply to full-time employees with open ended contracts but also to part-time workers, temporary workers and casual workers, if the live up to the definition of a wage earner (Lorentzen 2011:83). In some countries a standard employment contract may solely be understood as a full-time open ended contract, but in the case of Denmark it is more suitable to understand standard employment as employment regulated through the collective agreements, because being employed under a collective agreement means that the employee has certain rights and a certain level of protection regardless of type of contract. This view was supported in several of the interviews conducted in the project.

In many EU-countries, the collective agreements apply to the entire labour market (they have become universally valid or are extended to cover all workers by law), but this is not the case in Denmark. It is to some extent difficult to establish exact figures of how large a share of the Danish labour market is covered by collective agreements – especially at sector level, because it depends on the method of measurement and there are no register data. However, according to estimations from the Danish Employers' Association (DA) approximately 84 % of all employees in the Danish labour market are covered by collective agreements (see table 2.1.)[1], but there are vast variations between parts of the labour market. Certain areas have low coverage rates, whereas other areas are very high. In the public sector, all employees are covered by a collective agreement and working conditions are in general not precarious.

The negotiation based model have been shown to have some flaws in the public sector due to power asymmetry, since the state is the employer, but occasionally intervene as legislator and is also budget authority. This conflict of interests became highly evident in a recent conflict between primary school teachers and the state, where a political decree ended the conflict, which was initiated by the employers (Høgedahl and Jørgensen 2015).

In the private sector, overall coverage is somewhat lower around 74 % (table 2.1). It is highest in areas where the firms are members of an employer association (almost 90 %) and lowest in areas where employers are not members. Nevertheless, firms who are not members of employer associations can have collective agreements e.g. because they agree with the unions to enter into the already existing agreements or they may negotiate a local agreement. According to the Danish Employers' Association, such local agreements cover nearly 60 % of the unorganised part of the labour market (table 2.1).

[1] The Danish confederation of Industry (DI) furthermore claims, that a large share of the remaining 16 % also are covered by the Law of Salaried workers (see DØRS, 2015: 306-307).

Table 2.1: Employees covered by collective agreements in 2012 (per cent)

Part of private sector where firms are members of the Danish Employers' Association (DA)	Part of private sector where firms are members of the employers association in the finance sector (FA)	The unorganised part of private sector (firms are not members of an employers' association)	Private sector (total)	Public sector	Labour market (total)
88	89	59	74	100	84

Source: The Danish Employer Association (DA 2013a:262).

Within the private sector there is also a huge variations when it comes to sectors (see table 2.2). The construction sector and manufacturing have a substantially higher coverage than the private service sector, which among other things include cleaning, hotel, restaurants and transportation (Ibsen 2012:72). The variation are even bigger within certain industries e.g. farming have very low levels of collective agreements (Interview GLS-A). Some foreign firms do not have collective agreements at all. Although foreign companies are still a relatively small part of the labour market, the interviews indicate it is growing. We discuss this in details in chapter 6.

Table 2.2: Coverage *collective agreements in certain parts of the private sector in 2010 (per cent)*

Manufacturing	Construction	Private service
70	74	59

Source: Ibsen 2012 based on a survey among wage-earners. Coverage is therefore self-reported.

The specific content of the collective agreements – and therefore also the rights for different groups of employees – vary a great deal between the different sectors, because the negotiations about the collective agreements take place at different levels, but also due to historical conditions. A central trend regarding the Danish bargaining system is that it has become more decentralised over time, which means that more and more negotiations take place at the company level. In the private sector, framework agreements are negotiated at sector level within the main areas such as industry, transportation, trading/service, construction and media/communication and in most cases followed by company level detailing and amendments (Jørgensen 2014). Therefore, it is impossible to give a precise picture for the labour market as a whole of the exact rights stipulated in the collective agreements, but working under a collective agreement means that the workers have a certain amount of rights and protection in their employment relationship and full- and part-time workers are guaranteed a minimum hourly wage around 130 kr. (17.3 Euro). Fulltime workers have 37 hours/week and 5-6 weeks of paid vacation.

Decentralisation of the Danish bargaining system was to a large extent initiated by employers' associations and unions in joint collaboration starting in the 1980's. The partners in general agreed upon the need for more flexible agreements at local level; so the process have been termed 'centralised decentralisation' (Due et al. 1993; Scheuer 1992). Nation-wide collective bargaining was replaced with sector level

agreements that can then be further amended via local or firm-level negotiations (Andersen et al. 2015: 163). Since the unions still have a strong member base and are present in many local work-sites, the bargaining structures are reproduced at the local levels (Ilsøe, 2010) and decentralisation has not as such lead to noticeable reductions in wages and working conditions.

For terms of notice, there is a great deal of variation in the collective agreements. The construction industry is known as an area where the terms of notice are quite short even after several years of employment, whereas workers in manufacturing and transportation have a somewhat longer notice (see table 2.3). Salaried workers have even longer terms of notice.

Table 2.3: Examples of terms of notice in selected industries

	After 1 year of employment	After 5 years of employment	After 10 years of employment
Construction	3 days	5 days	5 days
Manufacturing and transportation	21 days	2 months	3 months

Source: LO (2005)

Legislation

As mentioned previously, different forms of legislation exists next to the collective agreements. Some become effective if an employee is not covered by a collective agreement and some do not apply if the employee already has similar (or better) conditions through the collective agreement. Other types of legislation have a broader scope and cover the entire labour market e.g. regulation of maximal working hours and non-discrimination.

One important piece of legislation, which is actually an exception from the principle that employment conditions are agreed upon between the unions and the employer associations, is a special law for the group of 'salaried employees' (the Employers' and Salaried Employees' Act). The law was passed in 1938 and at that time, the salaried employees were less organised than blue-collar workers and therefore less protected through the collective agreements. The law was passed in order to establish minimum protection and rights to this group through legislation (Jensen 2007:101), and despite the fact that this group of workers have become closer aligned with the rest of labour market, the law still applies. While the law does define several legal rights concerning the employment relations, it does not influence wages. This piece of legislation creates a regulatory mix regarding a specific part of the employment regulation. A salaried employee is white collar worker doing office, retail, technical or clinical work or work that requires supervision with other employees. To be considered a salaried worker, the weekly average working time must be at least 8 hours (Scheuer 2009:7-9). The terms of notice stipulated in the law are somewhat longer compared to the terms of blue collar workers.[2] Furthermore, if an employee has been continuously employed at the same employer for 12, 15 or 18 years, the employer must pay a compensation equalling 1, 2 or 3 months of pay, if the employee is dismissed. The terms of notice are still quite short in an

[2] More precisely within the first 6 months of employment, the term of notice is one month. After 6 months of work it is 3 months. For every third year of employment one month is added, but it can never be more than 6 months in total (the Employers' and Salaried Employees' Act).

international perspective (Larsen & Madsen 2015:106). The law also gives rights to pay during sickness and maternity leave and it protects against unfair dismissal.

Over time, the salaried employees have developed into the dominant form of employment at the Danish labour market. In 2007, approximately 53 % of the workforce can be categorised as salaried employees and the Employers' and Salaried Employees' Act therefore applies to quite a significant share of the workforce. In addition, the rights have been added to several collective agreements, in some cases with a direct reference to the law. Therefore, some workers who are not salaried employees as the law defines them still enjoy the rights in the law or rights similar to these rights (Scheuer 2009:15). It is estimated that approximately 2/3 of the workforce have such rights and that another 32 % of the workforce enjoy some of the rights from the Employers' and Salaried Employees' Act. This leaves approximately 4 % of the Danish wage-earners with no coverage from neither the Employers' and Salaried Employees' Act or the collective agreements, but we don't know whether this group has made individual agreements with rights like the Employers' and Salaried Employees' Act (Scheuer 2009:32).

A number of other laws also apply at the Danish labour market. They mostly concern wage-earners, but in some cases also self-employed. The Employment Contract Act states that wage-earners with a weekly working time of at least 8 hours must have a written employment contract with information on the terms and conditions of the employment relationship no later than after one month of work (Lorentzen 2011:101-103). The Holidays Act gives wage-earners rights to holiday and accumulation of holiday. For each month of employment 2.08 days of paid vacation is earned. This is equivalent to 25 days of paid vacation during one year of work (or 5 weeks). If a wage-earner has not earned the right to paid vacation, he or she still has the right to 25 days of self-paid vacation. The Equal Treatments Act secures equal treatment between men and women when it comes to employment (both wage-earners and some groups of self-employed) and is relevant when it comes to part-time work. If a part-time worker has less favourable employment conditions compared to a full-time worker, it is perceived to be a problem with equal treatment because more women than men are part time employed (Lorentzen 2011:110). The Equal Pay Act secures equal pay for equal work for wage-earners and the Maternity Leave Act stipulate rules of maternity leave and rules of maternity pay for both wage-earners and self-employed (Lorentzen 2011:110-112). The Act on Working Time has stipulations on working time, overtime work and breaks and is applied to wage-earners if they are not covered by a collective agreement and the law also defines overall maximum limits for work (this is an average of 48 hours/week over a four months period). Finally, the Act on Working Environment regulates safety and health at the work place and requires that companies with 10 or more employees (5 or more if the workplace is temporary with duration of more than 14 days) establish working environment organisations at the work place level.

Traditionally, with a few exceptions such as the Salaried Employees Act and the working environment regulation, no separate legislation have been enacted in Denmark to protect people in precarious work, primarily because politicians and social partners have not perceived these types of work as particular precarious or marginalised, because they have been regulated in the collective agreements. However, the interviews conducted in this project indicate that in some areas such as equal rights, part-time work and some types of subcontracting, there has been a tendency that the strong social partners has protected the established collaborative model giving potential unregulated problems or institutionalized precariousness conditions less attention. Such "blind areas" have become exposed when EU regulation has required the

social partners to adapt their agreements, and the regulatory initiative has in some cases been a lever for improving conditions where the power balance has been unequal.

In later years, some legislation for atypical work has been enacted because Denmark was obliged to implement different EU-directives on atypical employment. Therefore, the Part time Act, The Act on Fixed-Term Employment, the Act on Posted Workers and The Act on Temporary Agency Workers exist and they are all concerned with improving the employment conditions and quality of these forms of work. The main content of these laws has been negotiated by the social partners in what is called the *implementation committee* (with the exception of the temporary workers law on which an agreement could not be reach by the partners) (Lorentzen 2015). In the case of part time and fixed-term employment, the EU-directives were first implemented in the collective agreements by the social partners. Thereafter, legislation was enacted to provide protection to those employees, who were not covered by collective agreements. This is the usual way to implement EU-regulation with implications for the Danish labour market. When European legislation affects the Danish labour market, it is always handled by the implementation committee, a tri-party committee with representatives from the unions and employers associations and Ministry of Employment. The committee was formally established in 1999 and is based on the Danish national agreements on implementing EU labour market regulation starting with Maastricht treaty in 1993 (Lorentzen 2015). The committee seeks to implement all EU labour market legislation in the collective agreements (if this is permitted in the EU directive), and legislation to secure any not-covered workers is also discussed in the committee. No suggestions for law implementation of EU legislation are brought forward while the committee is working. Only if the social partners cannot reach an agreement, a wholesome legislative solution can come into play. This was the case with the temporary workers directive, since the partners had incommensurable perspectives on the directive and its content; however, the final content of the law was discussed with the partners (Lorentzen 2015). So, overall the implementation of European legislation is aligned with the traditional regulation of Danish labour market mainly through agreements between the social partners.

Social security and social protection

Besides describing the rules and regulations in the employment relation, it is also important to explain the social policies in the Danish welfare state, because it provides forms of protection, security and opportunities that complements the terms and conditions in the collective agreements. Social protection – in particular unemployment insurance benefits – is therefore an important component in the Danish Flexicurity model (Madsen 2006).

First of all, most unemployed are eligible to receive unemployment insurance benefits (arbejdsløshedsdagpenge) or the significantly lower cash benefits (kontanthjælp). The unemployment insurance system is a voluntarily insurance scheme mainly administered by the unions (the so-called Ghent system), but largely public funded. Seven out of ten Danes in the active labour force are member of an unemployment insurance fund (AK-Samvirke 2014). In order to achieve unemployment insurance benefits, it requires membership of an unemployment insurance fund for a certain amount a time and one must have worked at least 52 weeks (1924 hours) within in a period of three years. These requirements were tightened in 2010 as a consequence of a very controversial labour market reform (the so called Dagpengereform). In this reform, the duration of the unemployment benefit was changed from four to two

years. The reform was criticised for reducing the security element of the flexicurity model and led in some cases to unions demanding longer redundancy notifications and higher compensations (Klindt 2014:15), which can lead to reduced labour market flexibility. Also over 50.000 unemployed have used up their two years of unemployment insurance benefits (Klos 2015) and they may therefore face significant economic challenges. If one is not eligible for unemployment insurance benefits, in some cases it is possible to receive cash benefits, which is a means-tested public benefit aimed at those people who are not able to provide for themselves. Entitlement to this form of benefit has also been tightened during recent years and depends among other things on ones assets (e.g. house owners may be forced to increase their mortgage or sell their house) and on the earnings in the household. In practice, this tightening of the rules means that far from everybody are entitled to cash benefits.

If a person becomes unable to work on normal conditions, different social benefit and activation schemes exist, for instance the flexi job which can be granted through the local municipalities. It is a partly public funded scheme that gives the employees more flexible working conditions taking the person's employability into consideration. If a person is not able to work at all, early retirement pension is an option. However, the rules for assigning both flexi jobs and early retirement pension have also been tightened in recent years and fewer and fewer have access to these schemes. The Danish welfare state also gives universal rights to old age pension at the age of 65 for all Danish citizens (from 2019 to 2022 the pension age will increase to 67 and even further after 2025).

Summary – the Danish labour market and precariousness

To sum up, the Danish labour market is characterised by the fact that core employment conditions – in particular wages and terms of notice – are mainly regulated through collective agreements, which are then supplemented and curbed by different types of legislation. Some laws only apply if the workers are not covered by a collective agreement and thus secure some minimum standards. Wages are however not covered by any legislation (except legislation on equal treatment – in general same pay for the same type of employment within the same unit). Some aspects (such as working hours) are affected by both collective agreements and legislation. Overall, the regulative setting provides rights and protection to the majority of the workforce, so that employment covered by a collective agreement in general cannot be considered precarious employment in Denmark. At the same time, the Danish welfare system provides different forms of comparatively high social security standards for the majority of the workforce. Because this regulation apply to most types of employment, persons working in what is often referred to as non-standard forms of work such as part-time work and fixed-term employment enjoy the same rights and have the same level of protection as those working in the standard, open ended contract – at least at the formal level. Because of the degree of regulation and protection for these forms of non-standard work, they are not at a general level considered precarious in a Danish context. However, as we will show in the subsequent chapters, some protective gaps do exist for these groups as a whole or for specific groups working in these forms of employment.

In the following chapters, we first deal with precariousness in the less organised segments of the Danish labour market (chapter 3). Subsequently, we focus on different forms of non-standard employment in Denmark: less than full-time hours (chapter 4), temporary work (chapter 5) and cost driven subcontracted

work (chapter 6). For each type of work, the rules and regulations will be described and then the most important protective gaps will be discussed.

3. Precariousness in the less organised parts of the Danish labour market

While the majority of the workforce enjoys rights and protection levels that make them non-precarious, some workers at the Danish labour market work in less protected conditions. It is among these we find the most workers to be in precarious employment relations and where the larger protective gaps exist. They are primarily found in the unorganised or less organised part of the labour market in specific industries (or segments of certain industries – as e.g. subcontracted workers in the agricultural sector), where no collective agreements exist and where the unions are not present to secure a minimum amount of rights and levels of protection. The workers can be employed in different types of employment relations, both open-ended as well as different forms of non-standard contracts. Examples include the agricultural sector, cleaning and restaurants. Foreign workers – especially from the Eastern European countries who have migrated to Denmark to a rather large extent since the EU enlargement in 2004 – are also more likely to be employed under precarious conditions and they have often little or no knowledge about the rules and regulations that apply at the Danish labour market. This lack of knowledge probably enhances the already existing gaps, because the migrant workers are not necessarily aware, that they work under relatively precarious conditions.

As mentioned previously, a significant part of the private sector in Denmark (approximately 25 % of the employees) remains unregulated, in the sense that there are no collective agreements. This situation primarily concern smaller companies, although there is also larger firms without collective agreements. This does not, however, mean that one quarter of the Danish labour market have non-standard forms of work or precarious employment, since full-time and open-ended contracts also exist in the unregulated labour market. These firms might even follow the most important terms in the collective agreements without signing one, or provide better terms to avoid conflict with unions. Unfortunately, no information on which forms of employment are most predominant at this part of the labour market exist, but a quantitative study in 2010 by Scheuer, based on a representative sample of wage-earners, found that 22 % of typical employees (defined as full-time and part-time employees in open ended contracts) and 21 % of atypical employees (defined as fixed-term employees, temporary agency workers and persons with secondary jobs) were not covered by collective agreements (Scheuer 2011:54). This supports the view that several forms of employment exist at the unorganised part of the Danish labour market and since this is the case, this chapter deals with the knowledge we have on precariousness and protective gaps at this part of the labour market across several forms of employment.

As mentioned before, precarious jobs tend to cluster in certain industries or sub-sections of these in the private labour market, so we will discuss some of these sectors here. These sectors also have higher shares of labour migrants, so part of the discussion here reflects upon the share of labour migrants. In chapter 6, we discuss cost-driven subcontracted labour, which tend to intersect with the less regulated parts of the labour market, so some of the discussion will be touched upon in chapter 6 as well.

Andersen and Felbo-Kolding have in a 2013-survey on employers' use of Eastern European labour estimated in which industries the degree of non-organisation and non-regulation is the largest. They

investigated in which industries firms are least likely to be members of employer associations and least likely to have collective agreements. The findings provides indications on the patterns in the sectors, but the survey may have a selection bias, since it was conducted among employers and there could be significant underrepresentation of the firms with the worst working conditions for labour migrants (Andersen & Felbo-Kolding 2013:9). Their findings indicate that non-organisation and non-regulation is most common within agriculture, cleaning and hotels and restaurants (see table 3.1.), which is also supported by case study research (Refslund 2014).

Table 3.1: Firms' membership of employer organisation and collective agreement coverage in selected industries (%)

	Firm member of an employer organisation	Firm covered by collective agreements	Firm neither member of an employer organisation or covered by collective agreements
Agriculture	50	54	42
Certain parts of manufacturing	88	90	6
Construction	87	88	5
Cleaning	50*	59	35
Hotel and restaurants	73	61	20

Source: Andersen & Felbo-Kolding (2013:121-123) based on answers from a survey on 829 firms' use of eastern European labour.

* This the is number of firms. Interview data indicates significant higher shares of workers are working in firms that are members of an employer organisation, more towards 90 % (Interview 3F cleaning).

Around half of the firms in agriculture are members of employer organisations and a little more than half are covered by collective agreements, but there is great variation within the sector. While most firms within horticulture, forestry and agro-food companies are member of the employers' organisation only few agricultural companies are. In cleaning the pattern is similar, albeit the collective agreement coverage is a bit higher, however the figures from Andersen and Felbo-Kolding does only reflect the number of firms. If one looks at the share of workers working in a firm which is member of an employer association, the figure is much higher (Interview 3F cleaning). Hotel and restaurants have higher employer organisation and collective agreement coverage compared to cleaning and agriculture, but lower than construction and manufacturing where organisation and collective agreement coverage is quite widespread. However, there might be selection bias among hotels and restaurants, because less compliant and less organised companies did not take part in the survey.

In several of the industries, the lower degree of membership of employer associations is connected to the size of the firms, where the smaller firms are less likely to choose membership of employer associations (Andersen & Felbo-Kolding 2013:121-122). Especially in agriculture, many small firms exist due to the tradition for self-employed and small and medium scale farmers.

Andersen & Felbo-Kolding also estimated how large a share of the employers within each industry are neither members of employer organisation or covered by collective agreements. For manufacturing and

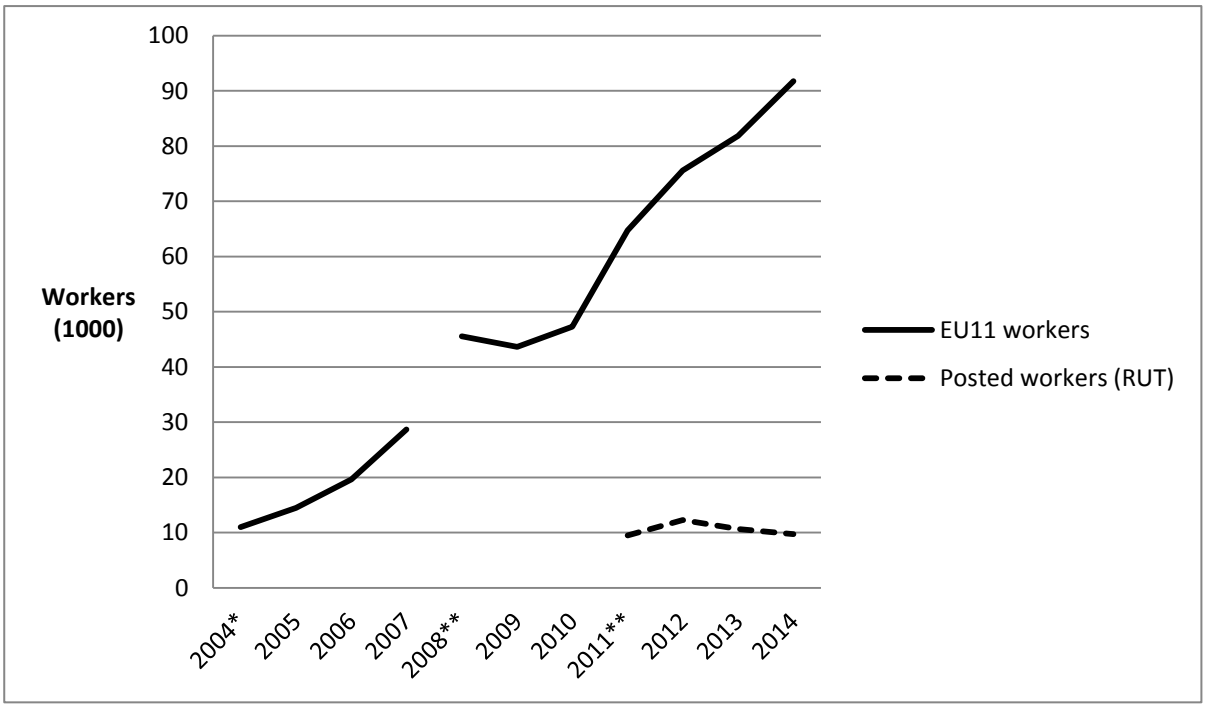
construction this was the case for only 5-6 % of the firms. In agriculture it was the case for 42 % of the firms, in cleaning 35 %[3] and in hotel and restaurants 20 %. At this part of the labour market, it is not known whether the employer and the employee have agreed upon wages and employment conditions similar to those in the collective agreements, but in principle only the legislation described in chapter 2 applies, which means that there are no rules on for pension, terms of notice, and in principle no lower limit for the wages. Being employed in this part of the labour market therefore means that there is a potential for different protective gaps, especially in-work regulatory gaps such as poorer wage and working conditions compared to those working in the organised and regulated part of the labour market. Representation gaps and enforcement gaps also exists due to the lower degree of organisation and the lesser degree of union presence to ensure decent wages and working conditions.

Research has also pointed to the fact that the use of foreign – especially Eastern European – labour is predominant in the less regulated industries such as agriculture, hotels and small restaurants as well as cleaning and the numbers have increased markedly in recent years (Refslund 2014). Figure 3.1 below shows the development since 2004. The number of Eastern European workers (EU11)[4] in Denmark has increased from around 10.000 in 2004 to more than 90.000 in 2014 which equals around 3 % of overall employment. The actual number are most likely higher due to under-reporting e.g. of posted workers or other types of undeclared work. From 2004 to 2009 special regulations concerning individual labour migrants from Eastern Europe existed (Østaftalen), which stated that migrant workers had to be employed on terms and conditions in accordance with the collective agreements. In 2009 this agreement was phased out and it means that it is now up to the unions to ensure that firms using foreign labour either join or comply with the collective agreements. Regulation concerning foreign companies working in Denmark has also been enacted (see chapter 6 on cost-driven subcontracted work).

[3] Again this is firm number and not shares of workers covered, where the interview data show a significant higher share who is member of the employer association.

[4] EU11 workers include workers from the eight Eastern and Central European countries that joined EU in 2004 and Bulgaria and Romania and Croatia joining in 2007 respectively 2013.

Figure 3.1: EU11 workers in Denmark 2004-2014



Source: 2004–2007: Malchow-Møller et al. 2009; 2008–2014: The Danish Agency for Labour Market and Recruitment.

*No posted workers included in 2004–2007 figures. **Break in data series due to mandatory registration.

Some EU11 labour migrants are employed in subcontracted companies e.g. in agriculture without any collective agreement and very low wages. Our interviews in the industry indicates that for subcontracted manual work in horticulture and forestry, the hourly wage for the EU11-workers is around 50 kr. (Interviews, 3F agriculture section and employers organisation, November 2015). According to the study by Andersen and Felbo-Kolding 42 % of all firms within agriculture used Eastern European labour and 23 % of all firms within cleaning did the same. They also found that Eastern European labour was used by 38 % of the hotels, 20 % of the restaurants and 43 % of firms within newspaper and magazines delivery (a part of the transportation sector) (Andersen & Felbo-Kolding 2013:14,60). These estimates seem a little low when compared with case study research and our interview data. Recent estimates suggest that more than half of all workers in general cleaning and in agriculture are Eastern European (Refslund and Thörnquist 2016).

The labour migrants are clustered in certain industries, which are reflected in the actual numbers of Eastern Europeans working in different industries in table 3.2. Cleaning is the largest segment with almost 22.000, followed by agriculture (17.000), construction (14.000) and manufacturing (12.000). This also suggests that Eastern European workers are mainly working in unskilled or low-skilled positions – but we know that many are overqualified for the unskilled jobs (Arnholtz and Hansen 2013). There is huge variation in collective bargaining coverage; construction and manufacturing have higher levels compared with cleaning which again have higher levels than agriculture. Following this many problems with precarious employment are found in agriculture and cleaning (Refslund 2014; Interviews, 3F agriculture and cleaning section and DI, November 2015). The construction sector is in many ways a special case when it comes to the use of

Eastern European labour because of a more widespread use of foreign companies and posted workers. This will be dealt with in more detail in chapter 6.

Table 3.2: Industry level of EU11 workers (2014)

Industry	**EU11 workers**
Cleaning (incl. operational services)	21.783
Agriculture, forestry and fishery	17.323
Construction	14.442
Manufacturing	12.255
Hotel and restaurants	8.786
Trade	7.195
Transport	7.047
Health care	3.502
Knowledge service	2.365

Source: The Danish Agency for Labour Market and Recruitment. The figures include posted workers. Only industries with more than 2.000 EU11 workers are shown.

Andersen and Felbo-Kolding (2013) found that employers most often employ Eastern European labour in open-ended contracts. 73 % of the firms using this form of labour stated that they used open-ended contracts, while 37 % used temporary contracts (adds to more than 100% because firms can use multiple employment types). This is significantly higher than temporary contracts in average (cf. chapter 5). The figures does not involve foreign firms positing workers to Denmark, which is important because of the high share (18 %) of the firms used subcontractors when employing Eastern European workers. The use of open-ended contracts is predominant in cleaning (90 % of all contracts), while the use of temporary contracts is especially predominant in agriculture (Andersen & Felbo-Kolding 2013:81), probably because of the need for seasonal work such as for instance berry picking.

The research on precariousness in the unorganised parts of the Danish labour market as a whole is very sparse, but is also due to the fact that unorganised firms are spread across various sectors and often include smaller and more dispersed firms and worksites. But several studies have dealt with wages and working conditions for the Eastern Europeans working in Denmark, which often face more precarious employment (Andersen & Felbo-Kolding 2013; Hansen & Andersen 2008; Arnholtz & Hansen 2009). The study mentioned a couple of times by Andersen and Felbo-Kolding is interesting, because it is able to compare the unregulated and the regulated parts of the labour market. When it comes to differences in wages, the study shows that companies at the unorganised part of the labour market (no collective agreement or no membership of an employer association) pay lower wages to Eastern Europeans compared to companies at the organised part of the labour market (Andersen & Felbo-Kolding 2013:150-152). We do not know for sure, but it is possible that these wage differences also could be found for Danes working at the unregulated part of the labour market. However, case study based research indicates that precarious employment conditions in these sectors mostly affect labour migrants and there are significant

tendencies towards a segmented labour market – especially in agriculture – but also to some extent in cleaning and hotels and restaurants (Refslund 2014; Refslund & Thörnquist 2016). Several of the interviewees pointed to the fact that Eastern European employees are often not aware of the fact that they are being underpaid, because they don't have knowledge on the Danish rules and regulations concerning wages (and also working conditions) and for some even a low wage in Denmark is significantly better than the wage they were used to in their home country.

Other studies are sector-specific. For instance when it comes to the cleaning sector in Denmark, we know that it covers both small one man business as well as large firms and cleaning is carried out both in private homes, private firms and public organisations. According to statistics from The Confederation on Danish Industry, the majority of the employees are unskilled (90 %) and almost 50% work part-time (Korsby 2011:16-17). Because of the unskilled character of the work and because only few language skills are needed, the cleaning sector has a high concentration of foreign – often Eastern European – workers, who use this form of work as labour market entrance (Korsby 2011; Madsen 2015; Refslund 2014). Undeclared work is common in the sector and there have been reports of illegal work, which suggest that the sector both have a formal as well as an informal segment (Korsby 2011:17). However, it is evident that the problems are concentrated among the minor firm and the larger, market-dominating firms offer better conditions and in general follow the collective agreements.

The wage level in sector collective agreement is around 130 kr/hour and wages are determined in the sector agreement (normal-løn), so there is no local wage negotiations. The extent of protective gaps in the cleaning sector is not known, but studies show that wages can be very low for workers who are not covered by collective agreements (Madsen 2015; Refslund 2015). There have been many examples of poor wages and working conditions for migrant workers in terms of very long working hours, no breaks, no overtime payment, no holidays, no in-work training and threats of dismissal when the employees drew the employer's attention to the poor conditions. In some cases, the employee holds a written contract with a certain amount of working hours, but in reality the working hours are much higher. There have also been several examples of smaller subcontracting cleaning agencies, who rent out housing with bad living conditions to migrant workers – often at unreasonable high prices – and deduct the rent before the wages are disbursed (Korsby 2011). There is also evidence of the use of subcontractors in this sector, where neither the subcontractor or the firm or organisation who hire the subcontractor take responsibility for ensuring decent wages and working conditions for the cleaning staff (Refslund 2014). This will be discussed in more details in chapter 6, which is about cost driven subcontracted work.

Studies have also dealt with foreign labour in the agricultural sector. As mentioned earlier Eastern European labour compose a quite significant share of overall employment in the sector and there is a widespread use of fixed-term contracts and subcontracted work in the sector, probably due to much seasonal work. According to Refslund, Poles used to be the largest group of foreign workers in agriculture, but today Poles, Romanians and Lithuanians are almost equally represented in the sector. According to Andersen & Felbo-Kolding, the increase in the share of Romanians – who are geographically more distant than Poles and Lithuanians – may be due to their lower wage expectations (Andersen & Felbo-Kolding 2013:180). When it comes to wages Andersen and Felbo-Kolding also found that the Eastern Europeans working in agriculture are among the lowest paid in all the sectors they studied. They found that the 10% with the lowest wages in agriculture on average received 85 Danish kroner an hour (equivalent to

approximately 11.40 Euros) (Andersen & Felbo-Kolding 2013:180). This is significantly below the hourly average minimum in the collective agreements (130 DKR equal to 17.3 Euros). Unions have reported incidents with even lower wages (Refslund 2014:15), and interviewees in the agricultural sector stated that subcontracted EU11-workers in horticulture and forestry have an average wage around 50 kr/hour. Since the share of foreign employees is quite high in this sector, it seems like employers are replacing Danish employees with foreign workers, which is also the understanding in the unions (Refslund 2014:15). Due to the low wages for this group, there is some evidence that employers use foreign workers, because they are cheaper. However, Andersen & Felbo-Kolding found, that employers in agriculture are trying harder than other employers to integrate the foreign workers through in-work training, knowledge on safety and language training (Andersen & Felbo-Kolding 2013:181), which suggest that they perceive the foreign labour as more than just cheap labour and actually try to integrate them in the sector. However, this only applies for EU11-workers employed directly in the Danish firms and not workers in the subcontracting firms.

Other sectors that have large shares of unregulated work include hotels and restaurants where studies have shown that the wages for Eastern European workers are at the same level as in agriculture (Andersen & Felbo-Kolding 2013). However, there are also many small restaurants, pizza shops and burger joints which more or less remains unregulated – many of the workers and owners are migrants or refugees or even illegal workers (Interview Horesta, Interview 3F service). The sector has not been investigated in previous research studies. The unions believe that there are quite substantial problems with illegal workers from outside Europe in the sector e.g. many workers in back-office functions like dishwashers are from countries outside Europe without a working permit or permit of residence (Interview 3F service).

An interesting characteristic of the hotel and restaurant sector is that the social partners have negotiated collective agreements that reflect the precarious character of the industry (seasonal work, evening and night shifts, very long and very short work shifts, strong need for temporary work to cover peak situations, etc.). For example, the collective agreement allow for part-time as low as 10 hours a week over four weeks (although this is an exception only applicable for individual workers), and it stipulates how so-called reserves (a sort of 0-hour contract) can be used, however reserve workers are guaranteed minimum five hour shifts. This means that in some sense, the collective agreement in this sector legalize what is commonly considered precarious work where the collective agreements in other sectors protects against it. According to the interviews with Horesta and 3F, 'legalising' such flexible working conditions has been the only way to reach agreement between the social partners, and the conditions in the agreements are also considered fit for the sector. Even with relatively flexible agreements, some employers would like even more flexibility of the agreement. However, like the rest of the Danish labour marked, the collective agreement secures the employees a range of conditions that are not otherwise guarantied. Some of the benefits for the around 60 % employees who are covered by the agreements in hotels and restaurants are: rules for tenure, payment for unsocial hours (between 6 pm and 6 am), terms of notice (from 14 days the first year to 6 month after 10 years), sector tenure rules for eligibility for pensions (6 month in sector), over-time work bonus (overarbejdstillæg), notice and compensation rules for schedule changes, minimum work hours for reserves (5 hours – 4 hours before 4 pm), full wage during sickness absence, right to maternity leave (9 month tenure), right to training, and more (collective agreement for restaurants 2014-2017). These benefits shows, that although the collective agreement accepts certain precarious working conditions, it closes a long range of potential gaps at the organized workplaces.

The interviews with the social partners indicate some waiters are still professionally trained but that the majority of waiting jobs in the sector has been taken over by students employed part-time (of whom many receive the public study grant, incomes are deducted from the grant). In larger restaurants and chains, the jobs as chefs are typically done by professional personnel. Unskilled kitchen helpers and dishwashers working back-office are typically people with non-Danish ethical origin. The situation in small, unorganized restaurants is not known to the social partners and this project has not the resources to investigate this further, so it is an area that needs further research attention. According to the social partners, actions from the working environment authorities and the tax authorities indicate that many small restaurants are badly organised and offer quite lousy working conditions. This indicates that the potential gaps are actually real for employees in the unorganized part of the sector, especially in small and family-owned companies.

It is generally difficult for the union to press small restaurants to negotiate agreements through collective actions, because it is difficult to establish coordinated action and blockades. The union also have the challenge that local representation is scanty (few shop stewards), so there is little leverage for recruiting members, informing about rights and for arranging campaigns. However, the union have had some successes. Currently, they have a case where a student worker is organizing a campaign in a sushi chain and historically, they successfully negotiated agreements with McDonalds and other large chains.

So, the hotel and restaurant sector both have challenges related to organized and unorganized work places. It is possible to work in jobs covered by the collective agreement that does not make it possible to build sufficient tenure to upload unemployment benefits and uphold equivalent standards as full-time employees (low hours part-time and reserves). In unorganized workplaces, which affect around 40 % of the work force in the sector, the interviews indicate that there are employment rights gaps, representation gaps, enforcement gaps, social protection and integration gaps. A large share of these employees are students, which makes the problem less salient, but as we indicated above, there is also a considerable part that are unskilled workers, of which many are migrants, refugees, and even illegal workers.

Other under-investigated areas that face challenges due to lower levels of regulation and increasing numbers of EU11-workers in precarious jobs, include newspaper and parcel delivery, the transport sector, and the retail sector, where there are 7.000 EU11-workers.

Self-employed workers

A specific group of workers that may be more prone to precarious work is self-employed workers, but our knowledge on this group is somewhat limited, especially when it comes to their working conditions. The collective agreements as such does not apply for them, but when they e.g. perform tasks for other firms it could be an issue whether the conditions are resembling the terms in the collective agreements. Nonetheless, we know that they tend to have higher sickness absence than other groups of workers.[5] Among the EU11-workers there is an overrepresentation of self-employed workers as well. Andersen and Felbo-Kolding reports that 4 % of the firms in the survey employed self-employed labour migrants, as a kind of mini-subcontractor with just one employee (Andersen & Felbo-Kolding 2013:82). There might also be challenges with bogus self-employment in construction, but the level is uncertain. Traditionally, there has been an understanding of self-employment as small-scale entrepreneurs, who have chosen this form of

[5] http://www.dst.dk/da/Statistik/bagtal/2005/2005-05-17-Selvstaendiges-sygefravaer

employment and traditional groups include farmers, artists and small-scale retailers. The number of self-employed has remained rather stable around 200.000 but with a slight decrease since 2000 to 191.000 in 2013 (Statistics Denmark,). Whether there has been an increase in non-voluntary self-employed is very uncertain, but developments in trades such as journalism and software indicate that this may be becoming more normal. Creative trades like journalists, photographers and web designers could have an overrepresentation in self-employed and some of this may be explained by a lack of standard employment options and that firms are passing on some of the uncertainty in the market to the self-employed, so they can just employ ad hoc labour. The spread of creative crowdsourcing (like Googles Mechanical Turk) could also impact this development within some creative industries.

Summary

All in all, the knowledge on employment in the less regulated parts of the Danish labour market is sparse and restricted, but there seems to be a number of protective gaps, mainly because of the low level or in some cases lack of collective agreements and organisation. The low or even unregulated areas are mostly located in certain segments of the labour market that already have lower organisation rates and less collective bargaining. This means that for some employees' wages and employment conditions are poorer compared to those working in the more regulated part of the labour market, but the extent is quite difficult to estimate. The majority of the workers who are not covered by collective agreements are most likely working on terms and conditions resembling the collective agreements, and parts of the not-covered employees are most likely workers in management position. Nonetheless, there are shares of employees working without collective agreements and significantly below the levels stipulated in these. Moreover, this seems to be connected with the use of foreign labour, which is overrepresented in these areas of the labour market. Certain segments of the labour market have more or less been taken over by EU11-workers e.g. all manual low-skilled work in horticulture (harvesting, cutting etc.) at very low wage levels (Interviews, 3F agriculture section and employers organisation, November 2015). These issues arise from the fact that some employers circumvent the collective agreements and employ foreign workers at lower wage levels and more flexible working conditions. Often the labour migrants are not aware of their rights (awareness gaps) and in some cases they fear the consequences if they speak up (power gaps). Another important implication in the Danish model is that small and dispersed work-sites are more vulnerable than industries with large and concentrated worksites when it comes to precarious employment, since the signing of collective agreements is contingent upon unions targeting firms. The more dispersed and remote these worksites are the bigger the problems in negotiating a collective agreement are for unions.

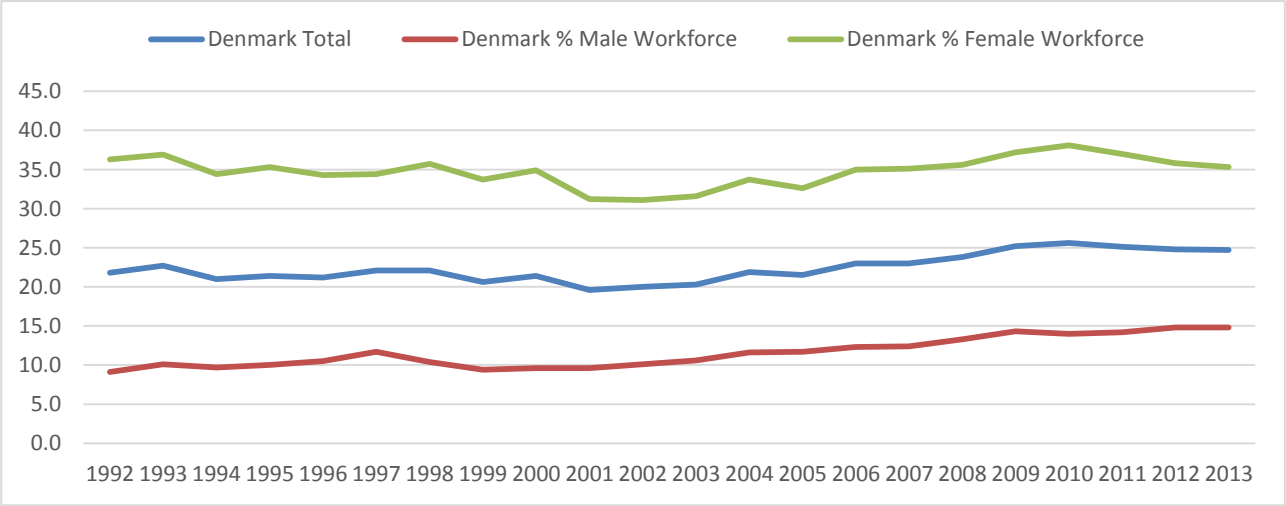
4. Less than guaranteed full-time hours

From this chapter onwards, focus is on protective gaps and precariousness in different types of employment at the Danish labour market and this chapter deals with employment less than a full-time standard job of 37 hours per week. Most widespread is *part-time work*, which by the interviewees and in the research literature for most parts is considered a typical form of work in line with the standard employment contract, except for the fact that the employee works fewer hours, but as we will return to later, there are tendencies of precariousness for part-time employees working short hours. In Denmark, part-time employment is normally understood as working less than 37 hours per week, whereas fulltime work is understood as working 37 hours or more per week (Larsen & Navrbjerg 2011:177). Another type of employment less than full time is the so called *flexi-jobs*, which are extraordinary jobs targeted individuals with a permanently reduced ability to work. Flexi-jobs are permanent positions, but they are considered a part of the active labour market policy in line with other wage-subsidy jobs. Therefore we have chosen not to include them in this chapter. Z*ero-hour contracts* are a third form of employment less than full-time, which is quite widespread especially in the UK. However, in a Danish context they don't seem that widespread. Some interviewees mentioned that it is possible to make such contracts, but most of them were not aware of the existence of such contracts in Denmark or could mention a few examples within their field only (Interview DA, Interview FTF, Interview HK, Interview Horesta). One union has articles on their website with examples of zero hour contracts within transportation (Rasmussen 2015) and a study from Mailand and Larsen reports that such contracts have previously been used in private cleaning companies (Mailand & Larsen 2014:48), but they seem to be very marginal and sporadic in Denmark. For this reason, this chapter will only deal with part-time work in Denmark.

Part time employment

In a European comparative perspective, Denmark has a rather high share of part-time employees. In 2013, almost 25 % of all Danish employees worked part-time, which is above average for both EU15 and EU27 (22,9 % for EU15 and 19,7 % for EU27 in 2013 according to the Labour Force Survey). The part-time share in Denmark has been constant or slightly increasing over the later years, where between 20-25 % of all employees have hold part-time jobs during the period from 1992-2013 (see figure 4.1). Part-time work is therefore quite common at the Danish labour market.

Figure 4.1: Part-time employment as percentage of total employment, 15-64 years, 1992-2013,[6]



Source: LFS data compiled and provided by David Holman and Marti Lopes Andreu.

Women are more likely to hold part-time jobs than men, which is also the case in many other countries. In Denmark, around 35 % of the female workforce works part-time compared to 15 % of the male workforce (see figure 4.1). During the last decade, the share of male part-time workers has increased slightly while the share of female part-time workers is at approximately the same level today as 15 years ago (see figure 4.1). Studies show that part-time work is more widespread among the youngest and oldest employees (Larsen & Navrbjerg 2011:179) and it is concentrated in certain sectors such as cleaning, retail, hotel and restaurant and the public sector, especially within eldercare, health, employment and teaching (Korsby 2011; Larsen & Navrbjerg 2011:180; Wehner et al. 2002:7).

In some countries, part-time work is not a voluntarily choice, but in the Danish case this is not the general picture. According to the Labour Force Survey from 2013, 18.3 % of the part-time employees stated that they involuntarily worked part time, which means that they could not find a full-time job (see table 4.1.). This share is below average compared to both EU15 (28.6 %) and EU27 (29.4 %). No larger differences are found between men and women, even though a slightly larger share of female part-time employees have stated that they are involuntarily in part-time work (19 %) compared to the male part-time workers (15 %). The problem of involuntary part-time is also concentrated in certain sectors e.g. in cleaning where there are many part-time jobs due to nature of cleaning tasks and the working hours, which typically is early morning of late afternoon/evening (Interview 3F). The main reason for choosing part-time work in Denmark seems to be because it is combined with some sort of education or training and therefore a large share of the part-time workers are in reality students. This is the case for 40.8 % of all part-time employees in 2013. Choosing part-time work for this reason is more common among men. Women to a larger extent than men chose part-time work due to personal or family concerns (26 % for women and 10.5 % for men).

[6] The respondents have answered the question whether they are part-time or full time employed and the answers are based on spontaneous answers given by the respondents and express therefore self-perceived part-time employment. Eurostat argues that is impossible to establish a more exact distinction between part-time and full-time work, due to variations in working hours between Member States and branches of industry.

Table 4.1.: main reason for part time employment in Denmark, 15-64 years, 2013 (%)

	Men	Women	Men and women
Could not find full time work	15,2	19,7	18,3
Own illness or disability	9,4	6,9	7,7
Other family or personal responsibilities	10,5	26,0	21,1
Looking after children or incapacitated adults	-	3,9	2,7
In education or training	55,5	34,1	40,8
Other reasons	9,2	9,4	9,4
Total	*100*	*100*	*100*

Source: Eurostat LFS.

Researchers and stakeholders generally do not consider part-time work in Denmark an atypical or precarious form of work. In the Danish literature, part-time employment is often referred to as a standard form of work in line with the full-time employment contract, except for the fact that the employee works fewer hours (Bredgaard m.fl. 2009; DA 2013b; Scheuer 2011; Lorentzen 2011) and the same was the case for the interviewees, who did not point out part-time employment as precarious or marginal. This perception of part-time work as a standard form of employment probably stems from the fact that part-time employment historically has been regulated through the collective agreements and legislation that cover all wage earners. Part-time employees are therefore, at least formally, covered by the same rules, regulations and protection as full-time employees and all other wage earners.

A recent study on trade union strategies towards precarious work supports this view. In the study the authors point out that the trade union movement neither perceives part-time work as atypical (because it is very widespread) or precarious (because no specific problems are associated with this form of work), but historically, the trade unions have had a preference for full-time employment, because it is seen as a better form of employment in order to obtain a reasonable living standard (Mailand & Larsen 2011:32). Furthermore, the authors state that the unions do not (anymore) oppose part-time employment because they have succeeded in getting part-time employees nearly as good conditions as full time employees (Mailand & Larsen 2011:32).

However, in a historical perspective some special regulations concerning part-time employees have been laid down in some collective agreements causing certain in-work regulatory gaps. For instance, in some agreements there have been restrictions regarding the minimum number of hours worked to secure the employees access to certain rights and benefits. In other collective agreements, the access to part-time work has been blocked, mainly because the social partners have wanted to obtain full-time employment as the norm (Andersen 2003:45,64).

Today, part-time employment is regulated as a mixture of collective agreements and legislation. In 1997, EU passed a directive on part-time employment to avoid differential treatment between full-time and part-time employees and to improve the quality of part-time work. This EU-directive was first implemented by the social partners in the collective agreements in 2001 and subsequently made into legislation (the Part Time Act) to ensure that all wage earners were covered by the directive. In 2002, there was an amendment to the Part Time Act because the new liberal-conservative government that came into office in 2001 wanted to remove the barriers laid down in the collective agreements for working part-time. This was met

with criticism from the trade unions out of fear that workers could be forced to change from full-time to part-time employment (Bredgaard et al. 2009:10). The amendment means that it is possible to change from full-time to part-time employment if the employer and the employee agree regardless of the regulations in the collective agreements (Andersen 2003:45; LO 2004:7). It is important to point out that the legislation does not grant the employee a right to part-time work. It is an option that the employer must agree with. However, the Part Time Act also states that if a worker is dismissed due to a rejection of a request to work part-time, the employee has a right to compensation from the employer (Bredgaard et al. 2009:10; LO 2004:7). The directive on part-time employment also lead to a change in the Employers' and Salaried Employees' Act (described in chapter 2), where the weekly average working time was changed from 15 to 8 in order to enjoy the rights in the legislation (Andersen 2003:56).

Before the EU-directive was implemented, the social partners in Denmark didn't see a need for separate regulation on part-time employment, because part time work was not perceived as problematic (Andersen 2003:47), but the effect has actually been that some of the in-work regulatory gaps for certain groups of part-time employees have been diminished, since part-time employees have obtained rights and protection more in line with full time employees.

Protective gaps

If we take a look at the entire group of part-time employees there is little evidence of severe gaps, even though we find some differences between part-time and full-time employees.

When it comes to representation such as union membership, being covered by collective agreements and working at a work place with a union representative research show that for the majority of part-time employees no severe gaps exist. Part-time employees are actually to a larger degree than full-time employees covered by collective agreements. This is shown by Scheuer on the basis of a representative survey in 2010 among Danish wage earners, where 79 % of part time employees are covered by collective agreements compared to 74 % of full time employees (Scheuer 2011:54). However, we also know that part-time employees are overrepresented in certain parts of the less regulated labour market, where the collective agreement coverage is lower (for instance in cleaning and hotel and restaurants as described in chapter 3). Studies also show that part-time employees are a bit less likely to be union members compared to full time employees, but the majority of part-time employees are still union members (Scheuer 2011:59; Larsen & Navrbjerg 2011:183). For instance, according to Larsen & Navrbjerg on the basis of ESS-data 58 % of Danish part-time employees were union members in 2008 compared to 68 % of full time employees. Larsen & Navrbjerg also points to the fact that the union membership rate decline with the number of weekly working hours. The less you work, the less likely you are to be a union member (Larsen & Navrbjerg 2011:183). When it comes to having a union representative at the workplace Scheuer shows that this is the case for 56 % of part-time employees and 63 % of full time employees (Scheuer 2011:56).

Also when it comes to in-work regulatory gaps, the overall picture is that part-time employees are not as a whole in a precarious situation, although there are certain minor differences between full-time and part-time employees. For instance, in Scheuers study 87 % of part-time employees had access to labour market pension compared to 94 % of full time employees (Scheuer 2011:41). However, the pension is typically reduced proportionally to the weekly working time, which may have an impact of the amount of money

one is able to save for pension when working part-time over a longer period of time (Larsen & Navrbjerg 2011:189). 84 % of part-time employees have the possibility to get access to education and training in the job compared to 91 % of full-time employees and 56 % of part-time employees have participated in education and training at the workplace during the last year compared to 61 % of full-time employees (Scheuer 2011:47). When it comes to wages, Gash has on the basis of ECHP data showed that part-time employees (defined as working 15 hours or more and less than 30 hours a week) are more likely to receive low pay (below 60 % of the national median wage) compared to Danish full-time employees. However, when controlled for other variables part-time employees are not more at risk of low pay (Gash 2005:13-15).

When it comes to social protection, part-time employees can join an unemployment insurance fund and receive unemployment benefits in case of unemployment just like full-time employees and part-time employees are members to almost same extent as full-time employees (85 % of part-time employees and 91 % of full-time employees according to Scheuer 2011:58). Part-time insurance is an option for persons working less than 30 hours a week. The membership fee and the level of benefit are lower compared to a full-time insurance. To qualify for unemployment benefit, a part-time insured person must have worked at least 1258 hours during a period of three years (compared to 1924 hours if full-time insured). If a part-time insured person is employed in a job with less than 29.6 hours a week it is possible to get supplementary benefits for up to 30 weeks within a period of 104 weeks.

However, for the group of part-time employees who work very short hours, more severe gaps exist. For instance, a part-time employee is not entitled to an employment contract if the weekly working time is below 8 hours. Also, if the weekly working time is below 8 hours over a period of one month, employees are excepted from the collective agreements and the legislation and do not have access to pension, pay during sickness, etc. (Larsen & Navrbjerg 2011:189). When it comes to access to unemployment insurance benefits, those working shorter hours may find it difficult to become eligible to full time insurance since the requirement is equivalent to 52 weeks of full-time work within the last three years. To be eligible to full-time insurance employees must at average have worked minimum 13 hours a week during a continuous three year period (Mailand & Larsen 2011:5). As mentioned earlier, the tendency to be member of a union decline with fewer working hours and the size of pension may also be affected when employees work very short hours for a longer period of time. It's difficult to establish the precise size of this group, but according to the Danish LFS for the first quarter of 2015 11 % of all employees have stated that they work between one and 14 hours a week (Statistics Denmark - statistikbanken.dk/AKU500). It has not been possible to divide these numbers according to industry in order to determine whether short part-time is more widespread in certain industries and whether the protective gaps mentioned before therefore are more sector-specific, but a study from Mailand & Larsen suggests that short part-time is quite common in the private cleaning sector (Mailand & Larsen 2014:45) and our interviews show that this is also the case in restaurants. The protective gaps for these sectors have already been dealt with in chapter 3 and will be highlighted again in chapter 6, which deals with subcontracted work in cleaning.

Summary

In Denmark, 25 % work part-time. It is a form of employment that is generally not considered to be precarious or to suffer from severe protective gaps, because part-time employees to a large extent enjoy the same level of protection and the same rights as full-time employees. However, we identified protective gaps for some minor groups of part-time employees. This is for instance the case for those working very short part-time, where the low number of weekly hours exclude them from rights and protection in the collective agreements and make it harder to become eligible for unemployment insurance benefits. For this group, we found some in-work regulatory, representation and social protection gaps. However, it should be mentioned, that a substantial share of employees working short hours are students that combine work and studies. Students typically receive public grants and they are typically not locked into this type of employment. The analysis indicates that precariousness is a problem for some part-time employees at the unorganised or low organised part of the labour market. It is difficult to estimate to whom this applies and how widespread it is, but as dealt with in chapter 3 there are examples of precariousness (low wages, poorer working conditions etc.) for part-time workers in several sectors such as cleaning and restaurants. An important finding of the analysis is also that some collective agreements accept levels of part-time that decrease the employees possibilities of building sufficient tenure for unemployment benefits and therefore also sufficient income for a decent living. The collective agreement therefore does not close potential social protection and integration gaps.

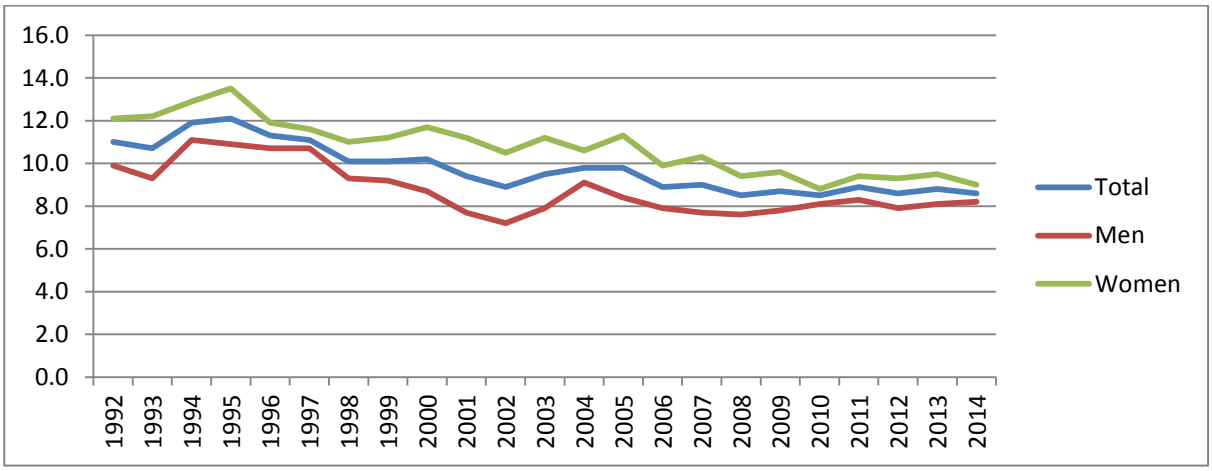
5. Temporary work

In the Danish context especially two forms of temporary employment are important - fixed-term contracts and temporary agency work (TAW). A fixed-term contract means that the employer and the employee have agreed to end the employment relationship at a certain point in time without further notice. This may be at a certain date, when a certain task has been completed or when another employee who has been temporarily replaced returns (DA 1999:204; Hasselbalch 2003). Temporary agency work differs from fixed-term contracts because of the shared managerial right between the temporary agency, where the temporary agency worker is employed, and the user company where the temporary agency worker performs the actual work. As we will show in this chapter, both forms of employment are to a large extent covered by the existing rules and regulations and are therefore not regarded precarious as such in Denmark, but in certain areas or industries or for some groups certain protective gaps exist. First, fixed-term contracts will be dealt with and afterwards the focus is on TAW.

Fixed-term contracts

Compared to other European countries Denmark has a rather low share of fixed-term contracts (8.6 % in 2014 compared to 14 % for EU28) and contrary to a number of other EU countries, the share fixed-term contracts has actually declined during the last ten years (see figure 5.1).

Figure 5.1.: Temporary employment as percentage of total employment, 15-64 years, 1992-2014,[7]



Source: Eurostat LFS.

According to the LFS from 2014 2.75 % had a contract of less than a month, 8.7 % had a contract between one and three months and 13.7 % had a contract between four and six months. Employees with contracts for maximum six months represent 25 % of all temporary employees and employees with contracts for maximum 12 months represent almost 50 % of temporary employees.

[7] According to Eurostat employees with temporary contracts are those who 'declare themselves as having a fixed term employment contract or a job which will terminate if certain objective criteria are met, such as completion of an assignment or return of the employee who was temporarily replaced' (http://ec.europa.eu/eurostat/cache/metadata/en/lfsa_esms.htm).

As shown in figure 5.1, women are a bit more likely than men to be temporarily employed, but this difference seems to have diminished over time. In 2014, 8.2 % men were temporarily employed compared to 9.0 % of the women. Studies show that temporary employment is more common among younger people (under 30), more widespread in the public sector within teaching, child care, elder care, health and social service and is found within various job functions and therefore not only restricted to low status jobs (Larsen 2008:32; Larsen & Navrbjerg 2011:179-180). According to the LFS from 2014, 53.3 % of all Danish temporary employees stated that they were in a temporarily job because they could not find a permanent job (compared to 62.3 % in EU28) and only 9.0 % stated that it is because they did not want a permanent job (see table 5.1). These figures are higher than part-time jobs. Involuntarily temporary employment is more widespread among women than men. However, temporary employment is also connected to education and training, where 34.3 % stated that they are temporarily employed because they are undergoing education and training.

Table 5.1: main reason for temporary employment in Denmark, 15-64 years, 2014 (%)

	Men	Women	Men and women
Could not find a permanent job	45.9	60.7	53.3
Did not want a permanent job	7.5	10.4	9.0
In Education/training	43.7	25.5	34.3
Probationary period	2.9	3.4	3.2

Source: Eurostat LFS.

Before 2003 no separate regulation existed regarding fixed term contracts at the Danish labour market, but fixed-term employment was regulated through the existing legislation and collective agreements covering all wage-earners (described in chapter 2). Certain limitations concerning fixed-term employment did exist. For instance, the law on Salaried Employees first provided certain rights after 3 months of work (Andersen 2003:120) and some collective agreements both in the private and public sector had a similar limit (Larsen 2008:10).

Since 2003, all fixed-term employees are covered by the Act on Fixed-term Contracts (Lov om tidsbegrænsede ansættelser).[8] The law is an implementation of an EU-directive from 1999, which aimed at improving the quality of fixed-term contracts in the EU-countries by ensuring that fixed-term employees have the same rights and possibilities as permanent employees. At first, the directive was implemented in the collective agreements by the social partners and afterwards legislation enacted to include fixed-term employees who were not covered by collective agreements (Larsen 2008:12). The law stipulates that fixed-term workers must have access to vocational training on the same terms as permanent employees and that the employer shall inform fixed-term employees about vacant positions in the company to ease possibilities for fixed-term workers to move to permanent positions. Another important aspect of the legislation is to protect the fixed-term worker against employers' improper use of successive renewals of the contract. Therefore a temporary contract can only be renewed due to certain objective criteria and in some sectors

[8] Temporary agency workers are not a part of this law, even though they often work in fixed-term contracts. TAW is covered by its own law (Vikarloven).

(such as teaching and scientific work) only two renewals can be issued before the fixed-term contract must terminate or an open-ended employment have to be offered. However, according to some of the interviewees, employers do not comply and there are examples of fixed-term employees working in certain parts of the public sector who have had their contract renewed too many times and who have brought their case to the Labour Court (Interview with Forhandlingsfællesskabet).

As was also the case with the Part Time Directive, the social partners did not expect the implementation of the EU-directive on fixed term employment and the subsequent legislation to have any effects, because fixed-term employment was not perceived as problematic (Larsen 2008:13-14). However, for a few small groups in the public sector certain in-work regulatory gaps have been diminished. Today, they rights have improved such as pay during sickness after one month of work whereas it used to be after three months and their rights are now more in line with the standard employees (Andersen 2003:47,64-65).

Protective gaps

As was also the case for part-time employment, there is little evidence suggesting major gaps for the group of fixed-term employees as a whole, but for some fixed-term employees and in certain areas, fixed-term employees seem to have less favourable terms and conditions compared to those working in permanent positions. The main issue is that access to some rights and benefits (in the legislation and in the collective agreements) dependent on seniority within the company, wherefore especially fixed-term employees who are repeatedly hired on short contracts experience the most gaps. For instance, the right to certain paid holidays and full pay during sickness and leave is typically given after 9 months of seniority in a company. Employees have the right to a written contract after one month of employment. If one is employed for a shorter period of time, uncertainty about what terms and conditions were agreed upon may exist. The right to pension and the possibility to participate in education and training is also dependent on seniority. The same goes for access to certain bonuses and the right to be elected for trade union representative (Lorentzen 2011:102-124).

Therefore, in-work regulatory gaps exist for fixed-term employees. For instance, when it comes to pension, the 2010-study by Scheuer found that 64 % of persons employed in contracts that terminate at a certain date and 31 % of persons employed in contracts that terminate by the completion of a certain task participate in savings for labour market pension. This is the case for 93 % of all full time employees. For those working in contracts that terminate by the completion of a certain task, the share with labour market pension has actually declined with 23 per cent points since 2000 (Scheuer 2011:41). The before mentioned requirement regarding seniority in the company is one significant factor explaining these differences. For instance in the municipal sector, workers who had not had a labour market pension before must have been employed minimum nine months before the right to earn pension is given.[9] Secondly, in some employment relationships in the public sector pension contribution is not a part of the employment relationship and in some cases the duration of the contract is so short that the fixed-term worker does not qualify for membership in a pension fund (Scheuer 2011:40). All things considered, those working repeatedly on short contracts lasting less than a year in the public sector may find it difficult to earn pension.

[9] http://www.hk.dk/raadogstoette/emner/pension/stat/din-pension-som-ansat-i-staten

The study by Scheuer also showed that fixed-term employees, and especially persons employed in contracts that terminate by the completion of a certain task, are less likely to have right to what is known as the 'sixth holiday week', which is a fringe that has existed in most collective agreements since 1998 and give rights to five paid holidays in addition to the 5 weeks of holiday (guaranteed in the Holiday Act).

Several studies also show that that fixed-term employees are less likely to have access to education and training at the workplace paid by the employer compared to full time employees (Gash 2005:22; Scheuer 2011:46-49). The most recent study by Scheuer (from 2010) shows that 33 % of contracts with termination by the completion of a certain task and 28 % of contracts with termination at a certain date compared to 91 % of full time employees have access to education and training (Scheuer 2011:47). Thus, employers primarily invest in education and training for those who are permanently employed at the workplace and to a lesser extent for those who are a part of the workplace for a shorter period of time. A study in the municipal sector[10] (a part of the public sector) shows that when temporary employees are given access to education and training, they are often given short courses and only courses necessary for the completion of the job they are already in (Larsen 2008:68-71).

Also when it comes to wages differences are found between fixed-term and permanent employees. Two earlier studies show that fixed-term employees earn less than permanent employees. Gash shows on the basis of ECHP-data for 1996-1999 that temporary workers are more at risk of low pay (below 60 % of the national median wage) when controlled for different variables such as gender, age, educational level, previous labour force attachment etc. And Eriksson and Jensen finds on the basis of a Danish representative survey in 2000 that the monthly wage for permanent employees is 6-7 % higher than the wages for fixed-term employees when controlled for a number of background variables (Eriksson & Jensen 2003:13,22). Furthermore, according the study in the municipal sector fixed-term employees were not granted pay supplement according to their qualifications in the local bargaining at work place level mainly because of the fact that they were not permanently employed and because of limited economic resources (Larsen 2008:66).

The same study in the municipal sector also found other indicators of differential treatment between the permanent and the fixed-term employees at workplace level, especially for those working in short contracts. For instance, in some municipalities the managers didn't inform the fixed-term employees on vacant positions (Larsen 2008:61), even though the law on fixed-term employment has made it mandatory in order for the fixed-term employee to move to more stable employment. Fixed-term employees were also to a lesser extent invited to participate in meetings and seminars at the workplace (Larsen 2008:62-64). The study also showed that some managers didn't have the proper knowledge on the rules and regulations concerning fixed-term employees, for instance when it comes to right to pension, child's first sick day, pay during leave and the possibilities to become elected as trade union representatives (Larsen 2008:64-66). This may lead to a lack of enforcement of the rules and regulations concerning fixed-term employees and may cause differential treatment between fixed-term and permanent employees.

When it comes to representation gaps, fixed-term employees are for instance covered by collective agreements to pretty much the same degree as permanent workers. According to Scheuer 86 % of persons employed in contracts terminating at a certain date and 72 % of persons in contracts terminating by the

[10] Among 14 randomly chosen municipals.

completion of a certain task state that they are covered by collective agreements. For comparison this is the case for 74 % of all full-time employees (Scheuer 2011:54). Union membership is also rather widespread among fixed-term employees (59 %) but at a lower level than full time employees (68 %) (Navrbjerg & Larsen 2011:183).[11] The level of union membership is similar to the level of part-time employees as described in the previous chapter. According to a study by Larsen & Navrbjerg in 2010 at the area for low skilled and skilled workers, the majority of fixed-term employees are at a workplace with a local trade union representative, but fixed-term employees experience to a lesser degree than both full-time and part-time employees that their interests are met in local bargaining at workplace level, probably because the local representatives give priority to those who are permanently at the work place and not those who are only there for a shorter period of time (Larsen & Navrbjerg 2011:185-188).[12] For the group of fixed-term employees, being covered by collective agreements and being union members are therefore not always a guarantee of having real representation at the work place level.

Finally, when it comes to social protection, fixed-term employees can join an unemployment insurance fund and receive unemployment benefits on the same terms as employees in permanent positions. According to the study by Scheuer fixed-term employees are to a quite large degree – but to a lesser extent than permanent employees – members of an unemployment insurance fund. 72 % of those working contracts that terminate by the completion of a certain task are members compared to 83 % of employees in time limited contracts and 91 % of full time employees (Scheuer 2011:58). Another issue regarding social protection is that some fixed-term employees in very short contracts – as was also the case for those working short part-time – have problems qualifying for unemployment benefits because of the eligibility criteria of what is equivalent to 52 weeks of work within a period of three years. How large a share of fixed-term employees this concerns, is not known.

To opt out an insurance against unemployment – as fixed-term employees do to a somewhat larger extent than permanent employees –also has consequences for their access to certain other benefits. For instance, the right to pay during different forms of leave is dependent on membership of an unemployment insurance fund and that the employee is qualified for unemployment benefits (Larsen & Navrbjerg 2011:190).

Temporary Agency Work

Before 1990 temporary agency work (TAW) was rather limited in Denmark, but in 1990 this form of work was liberalized when the regulation of private employment agencies was relaxed. The number of temp agencies and TAWs rose. In 1998, there were around 6,000 full time positions corresponding to 0.3 % of total employment (Windelin 2006). TAW employment rose until 2008, where it reached approximately 25,000 full time positions, which is equivalent to 1 % of total employment (Knigge & Bjørsted 2009). Not surprisingly, the share of TAWs dropped during the economic crisis, but in 2014 it reached almost the same level as in 2008. In the third quarter of 2014, the equivalent of almost 22,000 full time TAW positions existed (Dansk Erhverv 2015). According to DI Service (an Industry Association in the service sector) around

[11] Based on ESS-data from 2008.

[12] 23 % of fixed term employees agree with the statement 'my interests are not favored when the local representative negotiate with the management'. 17 % of part-time employees and 18 % of full-time employees agree with this statement (Navrbjerg & Larsen 2011:186).

69,000 persons were employed in temporary agency jobs in 2014, which suggest that much temporary TAW is part-time employment (DI 2015). No exact numbers exist as to how long the contracts are. Some are employed on day-to-day contracts, while others have contracts up to several years. According to Larsen & Mailand, who have interviewed central actors in the sector, contracts of 3 to 6 months is the most common type of contract (Larsen & Mailand 2014:16). TAW has a high labour turnover rate. In 2013, 52 % of all temporary agency workers left the sector, while 56 % of all employees were newly arrived (DI Service 2015). According to one of the interviewees, TAW is often chosen because it was not possible to get a permanent job and it is often used as a stepping stone to permanent employment (Interview with HK). This corresponds well with the fact that there is a high flow into and out of the temp agency sector.

At the moment TAW is widely used within transportation, manufacturing and construction. The use of TAW in manufacturing and construction is a quite new phenomenon, while TAW has been widespread within office work and social and health related services up until 2010. However, for several reasons such as financial cutbacks and the establishment of internal TAWs, the use of TAW within healthcare and social services has been reduced, for instance whit regard to nurses (Larsen & Mailand 2014:13-14).

Many temporary agency workers have a short education. The study from DI Service estimates that nearly 70 % of all temporary agency workers in 2013 were skilled or unskilled, but points out that the level of education has improved during recent years, mainly because there has been a stronger demand for workers with medium length level of education and a lesser demand for unskilled TAW within construction and manufacturing. Also, in times of crisis with higher unemployment rates, more educated persons have decided to become temporary agency workers (DI Service 2015). Young people are overrepresented in TAW. In 2013, 28 % of all temporary agency workers were between 18 and 29 years old, while this age group accounts for 20 % of all employees in all other sectors (DI 2015). This indicates that TAW is also used by young people before or in combination with education. Workers with a non-Danish background are also overrepresented. In 2013, 14 % of all TAW was held by employees with another ethnic background than Danish. For comparison this was the case for approximately 9 % of the entire labour market. The share of non-Danish workers in TAW has risen with 4 percentage points since 2005 (DI Service 2015).

Originally, TAW was not regulated through the collective agreements and historically, the Danish trade unions have been against TAW, because it was seen as poor work that undermined the standard employment contract. Therefore, the unions had no desire to incorporate this type of employment into the collective agreements. However, this belief has gradually changed during the last 20-25 years due to a realization that TAW has become a relatively significant form of employment at the Danish labour market. In the 1990ies some unions began to plan how TAW could become a part of the collective agreements. In some areas, such as the service sector (for instance within retail and office work), the strategy was to make agreements directly with the temporary work agencies or through an employer association. In other areas, such as manufacturing, the strategy was to make sure that companies who used TAW were obliged to offer the terms and conditions in the sector's collective agreement.

These efforts led to a situation where TAW on the whole were covered by collective agreements (Andersen & Karkov 2011:166-167; Kudsk-Iversen & Andersen 2006:20). In some cases, TAW is included directly in the agreements and in some cases a protocol concerning TAW exists next to the collective agreement (Andersen & Karkov 2011:166-167). For instance, a protocol within manufacturing states that if a temporary agency worker is sent to a company to do a job within an area where a certain collective

agreement apply, then the agency worker is covered by that agreement regardless of whether the temporary agency is organized or not (Lorentzen 2015). The same is the case within parts of the construction sector, where there has been a tradition for lending and sharing employees across companies (Lorentzen 2015). Within trade, office work and transportation temporary agency workers are a part of the national collective agreements that apply to the entire sector (Kudsk-Iversen & Andersen 2006:26-27-28). Therefore, the terms and conditions for TAW have, at least formally, become more in line with the terms and conditions that apply for similar employees in the same area of work. However, because of the shared managerial right between the temporary agency and the user company it is not always clear which collective agreement that applies to the temporary agency worker, which has led to a number of cases in the labour court (Andersen & Karkov 2011:167; Lorentzen 2015).

When it comes to legislation, TAW is covered by most of the legislation mentioned in chapter 2, but temporary agency workers who conduct work on the same terms and conditions as salaried employees are not covered by the Law on Salaried Employees (Lorentzen 2011:105). This has for instance complications when it comes to terms of notice. The EU-directive from 2009 on TAW aimed to improve the conditions for TAW by ensuring equal treatment between temporary agency workers and the employees at the user company in terms of pay, working time, overtime work, breaks, etc. The social partners could not agree on implementing the equal treatment principle in the all collective agreements in each of the sectors, even though examples of implementations were already in place in the manufacturing sector and parts of construction (Lorentzen 2015). Therefor in 2013, the law on TAW was passed by the Danish Parliament (Vikarloven). The parliament respected the discussions in the implementation committee by making collective agreements the founding principle.

The law applies if the temporary agency worker is not already employed under a collective agreement in either the agency or at the customer workplace. The temporary agency must ensure that these requirements on equal treatment are complied with and the user company must ensure that temporary agency workers are informed on vacant positions in the company and that the agency workers have access to facilities in the user company, such as for instance child care arrangements or access to a canteen scheme. The user company must also inform the union representative at the workplace that TAW is used. In general, this principle of equal treatment means that temporary agency workers must work under the same terms and conditions as the employees who are directly employed in the user company unless there are objective reasons for differential treatment. This law should also ensure equal treatment between salaried employees and temporary agency workers who do work on the same terms and conditions as salaried employees, even though they are not covered by the law on Salaried Employees (Lorentzen 2011:106). Equal treatment does not necessarily mean a one-to-one match of conditions and benefits, because benefits may be converted into equivalent payment e.g. in cases where the TAW can in practice not benefit from company arrangements.

When the TAW law was enacted, it changed the practices in the TAW agencies, because if a TAW agency had a TAW collective agreement, their employees would only have to follow basic conditions in the sector (wage and working time), but would not have to follow all the local conditions in the company or in the collective agreements in the sector of employment. This means that in certain areas, it became possible to avoid the equal treatment principle – depending on the TAW agency collective agreement. Consequently, the implementation of the law led to fundamental changes in the behaviour of the large TAW agencies.

Over a very short period in 2013, most the major agencies joined the agreement (Interview HK). The primary reason was that it saved them a lot of administrative procedures. With the agreement, they did not have to comply to and document that they complied to the rules in each specific workplace or sector where their employees were employed. This took the union HK a bit by surprise, and in 2014, adjustments were made to the agreement to make it fit to the TAW agencies' needs. The agreement has an interesting feature. It is possible to convert pension into vacation or additional salary. However, the majority of the agencies decided to convent pension to salary, which in principle is not a problem, if the TAWs place the money in private pensions, but this is far from always the case (Interview HK). In practice, the practice creates possibilities for integrative gaps.

Thus, the regulation concerning TAW still appears quite complex, and the implementation of the TAW has created a regulatory hierarchy: 1) TAW collective agreement with wage and working time according to local agreements or conditions, 2) equal conditions according to company or dominant sector collective agreement, 3) if no agreements, equal conditions according to de facto conditions in company or sector, but the employee is responsible for negotiating the terms. In some sectors, it is difficult to determine the correct equal rights (which is the right agreement? which terms are comparable?), and this is in some cases taken advantage of by the employers to the disadvantage for the TAW. The union explained that is was very difficult to get cases to take to court because TAWs are in a precarious employment situation. They are afraid that they will not be rehired, if they complain (Interview HK). Therefore, they often do not approach the union until after they have received a permanent position and then the case is hard to lift. I.e. there is an enforcement gap that is caused by the character of the employment. The regulation of temporary workers is therefore quite complex due to the mix of various collective agreements and the TAW-legislation (Lorentzen 2015: 189-90). The mix leaves some loopholes that can be exploited by employers, such as using TAW agencies without agreements, when this is most beneficial, or by using TAW agencies collective agreements that stipulates worse conditions than what is common in the sector. However, this only affects a small segment of the TAWs and they are, in any case, covered by collective agreements.

It is worth mentioning that even though TAW has become a part of the collective agreements, TAW work is also present at the unregulated part of the labour market, where the unions are weaker and where the companies are not members of employer associations. Therefore, temporary agency workers also work outside the collective agreements. This is especially the case in agriculture, gardening, cleaning, hotels and restaurants, but the precise extent is not known (Andersen & Karkov 2011:168), and at least in agriculture the issues with subcontracted labour migrants without any collective bargaining are widespread. According to the study by Scheuer which is based on a survey among a representative sample of wage earners, 62 % of all temporary agency workers stated that they were working under a collective agreement which is somewhat below the average of 74 % for all forms of private sector employment and even less than the overall level of 84 % (Scheuer 2011:54). Temporary agency workers are also used in the public sector, but here they are covered by the collective agreements.

Protective gaps

Even though TAW has become rather well regulated, there are still some gaps compared to the standard employment contract for temporary agency workers. One issue is the confusion about which collective agreement that applies because of the shared managerial right between the temporary agency and the user company, which may lead to non-equal treatment. Another issue is the fact that temporary agency

workers – as was also the case for fixed-term employees – do not to the same extent as standard employees have access to those rights and benefits that are dependent on seniority in the company, because they are often employed in short contracts. This is the case, when it comes to access to labour market pension, pay during sickness and leave, the right to child's first sick day, etc. According to one of the interviewees from HK – a union for salaried employees within retail and office work where there is a significant share of TAW – it is possible to earn the rights based on seniority in a company, if a TAW has worked in total 9 months over a period of 3 years, but this has to be work within the same temp agency. Therefore, those agency workers who move between different temp agencies are still cut off from these rights, which is a quite significant share of all temporary agency workers (Interview med HK). HK wishes – but has not yet succeeded with it – to implement a system where seniority dependents on tenure within the collective agreement, which means that temp agency workers earn the rights based on seniority if they work within a certain collective agreement and not at a certain employer (Interview with HK).

The study by Scheuer referred to a number of times showed that in-work regulatory gaps that concern fixed-term employees also concerns TAW, but in some cases to a more severe degree. For instance 46 % of all temporary agency workers participated in savings for labour market pension while it was 64 % of all fixed-term employees, 31 % of all contracts that terminates by the completion of a certain task and 94 % of all full time employees (Scheuer 2011:41). Only 25 % of all temporary agency workers had rights to the sixth holiday week compared to 49 % of contracts that terminate by the completion of a certain task, 61 % of all fixed-term employees and 92 % of all full time employees (Scheuer 2011:43). And only 14 % had access to education and training at the job which is also lower than both fixed-term employment and the standard employment contract (Scheuer 2011:47). These figures are, however, from before the TAW law was enacted and collective agreement became commonly used.

As was also mentioned for fixed-term employees, there are examples of differential treatment at work place level and some trade union representatives accept that temporary agency workers are not treated equal to employees in permanent positions (Mailand & Larsen 2014:17). In some cases, temporary agency workers are seen as a threat by the permanent staff and exclusion from the community at the workplace takes place (Mailand & Larsen 2014:19). Examples are also found of less favourable wages and working conditions, especially in agriculture and industrial cleaning (Mailand & Larsen 2014:17), where such positions are often held by foreign employees. However, some temporary agency workers actually receive higher wages compared colleagues in permanent positions, because the TAWs are compensated for the lack of other benefits not included in the salary. This is mostly the case for TAW in certain areas of the public sector such as nursing (Mailand & Larsen 2014:18). When it comes to union membership and membership of an unemployment insurance fund there are some differences in the literature. Andersen & Karkov estimates, that the levels are '*clearly below average*', while Scheuers figures are a bit higher, but still below average (Andersen & Karkov 2011:161; Scheuer 2011:58-59). On basis of this summary, it is fair to say, that there is evidence of representation and social protection gaps, but it is not the case that the majority of the TAWs suffer from the gaps.

Summary

This chapter has dealt with temporary work in Denmark and more precisely with fixed-term contracts and temporary agency work. Both forms of work are present at the Danish labour market but they are not

predominant forms of employment. Less than 10 % of all employees are employed in fixed-term contracts and less than 1 % of total employment is temporary agency work. On a general level, these forms of employment are covered by the existing rules and legislation covering all employees, even though TAW has first been included into the rules in recent years. Because temporary work is highly regulated, being temporarily employed does not per definition mean that the work is precarious, but there are tendencies of certain protective gaps for larger or smaller groups of temporary workers. When the entire group of temporarily employed is compared with full time employees in permanent positions, we find tendencies of less protection and less access to certain rights and benefits, but most affected are certain groups of temporary workers. This tendency is particularly pronounced on the unregulated part of the labour market where employers don't comply with the rules and legislation, which was also the case for part-time employees. Often jobs in this part are held by foreign employees, who are not aware that the rules and legislation are not complied with. Another example is very short temporary work, where access to rights and benefits are not earned because they are dependent on seniority. This was also a problem for those working very short part-time as dealt with in chapter 4.

6. Cost-driven subcontracted work

The last type of employment discussed in this report is cost-driven subcontracted work, which is not per se precarious. A lot of activities are subcontracted every day, e.g. due to the lack of the needed skill in the firm or because the tasks are very specific and time bounded. However, as subcontracting is often used to reduce cost it creates a pressure on wages and sometimes lower wages are achieved by using a subcontractor with no collective agreements or with a different agreement. This section focuses on *cost-driven* subcontracting, since it often has important implications for working conditions for the subcontracted workers. Subcontracting can lead to precarious conditions for workers not covered by collective agreements such as weakly regulated sectors, posted labour migrants, or bogus self-employed workers. Danish companies can function as subcontractors for another company on the provision of a certain service. The same is the case for Danish self-employed or one man businesses.[13] However, this form of work can also be taken on by foreign companies, who decide to bring their own employees to Denmark in connection with the delivery of a certain service (posting) or by foreign one man businesses. Some foreign subcontractors set up Danish subsidiaries which then only employ Eastern European labour migrants.

The various forms of *cost-driven* subcontracted work can be regulated by collective agreements but quite often they are not. In face of strong competitive pressure subcontractors may resort to wage reductions to reduce overall costs; either reduction by opting out of the collective agreements or never signing one in the first place or by increasing workloads and work pace as seen in cleaning (interview 3F cleaning). So from the firms' position in the value chain it will often be possible to deduct the likelihood of precarious employment occurring in the company. In some cases, subcontracting firms are used primarily to surpass the established wages and conditions in the collective agreements. This is the case in much low-skilled manual work in Danish horticulture Interviews, (3F agriculture section and employers organisation, November 2015). Foreign subcontracting firms in agriculture very rarely have collective agreements. Subcontracting can result in more segmented labour markets as currently seen in agriculture (Refslund and Thörnquist 2016). Work processes can be further subcontracted in longer chains, which have previously been observed in cleaning. This blurs the employment relations and makes it difficult to place the responsibility for precarious employment conditions.

The extent of precariousness in subcontracted work is not known, but this phenomenon is – as many other types of precarious employment – more present in certain sectors and job functions. Also in subcontracted work, labour migrants are overrepresented: 18 % of the firms employing Eastern European workers in the Andersen and Felbo-Kolding (2013:82) survey did so through subcontractors. Subcontracting is very widespread in the construction sector, where there is a long tradition for using different subcontractors and one man businesses in connection with construction work (Grillis & Dyreborg 2015:10). This does, however, not indicate that it is cost-driven, nor resulting in precarious employment. Nevertheless, the construction sector has also had a large number of foreign – mainly Eastern European – companies but also

[13] The term 'one man business' is used in line with the term 'self-employed', because it is the term used in the literature and by the interviewees.

one man business entering in recent years. In certain areas of the public sector, subcontracting (or outsourcing) of certain services such as cleaning, home care and employment related services has also prevailed. Public outsourcing has grown in importance in recent years due to financial pressure on public finances, but also for political ideological reasons, so public outsourcing often has a cost reduction element. Home care services and employment related services are by large conducted by Danish employees, but especially in cleaning, foreign employees are overrepresented and there have been examples of very precarious employment condition e.g. in subcontracted public cleaning (see Refslund 2014). As will be described in more detail later, it seems as if – across the different sectors using subcontracted work – the protective gaps are bigger for non-Danish workers, because of their lack of knowledge on the Danish wage levels and working conditions, and because they are afraid of losing their job. Since cost-driven subcontracted work is used in different ways in certain sectors, this chapter is divided according to sectors. However, first the rules and regulations concerning this form of work are described.

Rules and regulations

Few rules apply when a company decides to outsource smaller activities. If a firm transfer the entire set of activities or parts thereof, the Act on company transfers (Lov om virksomshedsoverdragelse) applies. According to this, a company taking over another company's activities are bound by a signed collective agreement, individual wage agreements, employment conditions and any elected workers representative status is also safeguarded. However, this only applies if the company takes over the previous infrastructure and machines and until the collective agreement has to be renewed. Workers in a transferred firm can be fired if it is grounded in economic, technical or organisational causes. So, any guarantee is rather short-spanned and workers are often fired when an activity is transferred. If some work is subcontracted e.g. on a time limited contract, the legislation does not apply.

Otherwise it is up to the unions and employees in the subcontracting firm to secure the wages and working conditions. If the company retains some similar job functions and the outsourced functions are performed within the firms' boundaries the equal treatment paragraph in the law on temporary agency work might apply. There are only few Danish examples of subcontracting work within the existing work-sites e.g. where larger parts of production in manufacturing is taken over by agency workers.

When public work is subcontracted or outsourced, the use of social clauses or labour clauses in the contracts have increasingly become standard and this might help mitigate the potential negative consequences of the outsourcing (Refslund 2015).

Posting

If a foreign company decides to perform work in Denmark with workers from the home country, it is considered posting (there are few exceptions by they are very limited). Posting means that a non-Danish company (established in an EU member state) posts its own employees in Denmark in to deliver specific time limited services in Denmark. While posting often has been highlighted as a very important aspect of intra-European labour migration, the impact in Denmark have been more modest and is declining. The number of posted workers has since 2011[14] remained around 10.000 with a peak in 2012 at 12.524 and

[14] This is when regulation on the RUT-register was tightened (the register is discussed below).

down to 9.706 in 2014[15] and compared with overall numbers of labour migrants, posting has lost in prominence. Danish labour market regulation makes posting less relevant. Posting has been used to bypass national labour market regulation, but since there are no binding minimum wages in Denmark – neither legal nor extended from the collective agreement – the foreign firms can make any wage agreement with the workers they want to in their Danish subsidiaries as long as they have no collective agreement. So of 92.000 EU11-workers less than 10.000 are posted. The Danish implementation and adjustment of the posted workers' directive have made it even less relevant. Posted workers are covered by the Danish Act on Posting, which is based on the EU-directive from 1996. The purpose of the directive is to ensure fair competition and to make sure that the employees have comparable rights and working conditions when they are posted in another country.

Following the Laval-case at the European Court of Justice (ECJ) in 2008, there were widespread concerns on the implications of Laval for the Nordic IR-models based on collective agreements and not individual wage rights (see Refslund 2015 for further discussion). The cardinal point was the unions' right to impose a collective agreement upon posting firms. If this could not be upheld, it could potentially open the Danish labour market completely for low-wage competition through posting. Shortly after the Laval-case, a tripartite committee with representatives from the national unions and employers' association and the state as well as expert members, was formed in order to address the problems presented by the Laval-case for the Danish IR-model. The committee suggested to amend the Danish law of posted workers, and a new paragraph (§6A) was added that states that Danish unions can take industrial actions (include strikes and blockades) against foreign firms posting workers in order to force them to sign a collective agreement and ensure wages equivalent to the Danish wages for similar work. The unions' claims have to be clear and the same as towards Danish firms in the most representative collective agreements (in effect removing any alternative union agreement e.g. the Christian Union movement). The Danish labour court recently verified that Danish unions can take industrial action against posting firms in a 2014 case (the Hekabe case).

The Danish Act on Posting states that posted workers in Denmark are covered by a number of specific laws (the legislation mentioned in the introduction such as the Working Environment act, the Non-Discrimination Act, the Equal Pay Act, the Differential Treatment Act and the Act on Working Hours). The Act on Posting also states that posted workers are covered by certain parts of the Act on Salaried Employees, which give certain rights to female employees during pregnancy and leave. When it comes to holidays, the law states that foreign companies must apply the rules that are most favourable for the employee. In practice, the rules from the home country apply, but if the Danish rules are better in terms of length or payment, then the Danish rules apply (www.posting.dk).

The Danish Act on Posting also states that foreign companies posting workers must register in the so called RUT-register (the Register for Foreign Service Providers). The register is used both by the public authorities and by the social partners to control whether the foreign companies comply with the rules and regulations concerning posted workers. The register was actually established back in 2008 on the basis of collaboration between the social partners. In the first years not many foreign companies registered in RUT, but since the rules were legalised and tightened in 2010 and it became possible to sanction the companies with a larger fine, the number of foreign companies registered in RUT has increased. It was also decided in 2010 that foreign one man businesses should register in RUT. Before that, no registration was needed for these firms,

[15] Own calculations based on public figures from The Danish Agency for Labour Market and Recruitment

but the unions in the construction sector had learned that some one man business, who were acting as subcontractors, in reality were doing normal paid work and therefore were used to bypass the collective agreements (Andersen & Pedersen 2010:6-7).

The construction sector

The construction sector has certain characteristics that make both the use of temporary work and subcontracting necessary (Grillis & Dyreborg 2015:10). At the same time, it is also a sector where the use of foreign labour, most often Eastern European, is quite widespread both in terms of foreign workers who are directly employed in a Danish company, foreign workers who are working for Danish companies through temporary work agencies and in terms of foreign subcontractors or self-employed, who work as subcontractors (Hansen & Andersen 2008:21). In this section, the main focus is on foreign companies and foreign self-employed in this sector who functions as subcontractors, but it is not always possible to omit the other forms of employment (e.g. TAW), because the studies referred to and the interviewees not always distinguish between the different forms of employment. The inflow of labour migrants has been more sensitive to the economic conjunctures than other sectors[16].

Compared to other sectors posting is most prevalent in the Danish construction sector. Roughly half of all posted workers and two-thirds of all posted EU11 workers in Denmark are working in construction and the rest of the posted workers are scattered across several other sectors. According to the RUT-register, two thirds (2398) of all foreign companies registered in Denmark in 2014 (3931) were conducting work in this sector (The Danish Agency for Labour Market and Recruitment). 66 % of the foreign companies in the construction sector originate from one of the 10 new eastern European member states (especially from Poland) and around 22 % of the companies are from Germany. Foreign one man businesses are also obliged to register in RUT, but it is not possible to see how many they are, because the register does not distinguish between wage-earners employed in foreign companies and one man businesses, but it is possible to see that these two groups together had a size of almost 10,000 in the construction sector in 2014 (The Danish Agency for Labour Market and Recruitment). Figures from the public registers show that posting used to be widespread among EU11 workers, however, the share of the EU11 workers that is posted has declined from 60 % in 2012 to 42 % in 2014. This shows that the sector also uses foreign labour in other ways than posting.

The interviews with the union 3F indicated than even when migrants are not posted, they put a pressure on the wages and conditions, because they do not know the collective agreements, they have no experience in negotiating terms with the possibilities of the agreement, they do not know options for negotiating piece rates, and because they may be afraid of not being rehired. Some employers, therefore, use the collective agreement as a minimum standards agreement, which is against the intentions of the agreement. The latest bargaining round introduced a new paragraph in the collective agreement that states that the agreement should be used according to the intentions. This paragraph still needs to be tested in court. Minimum standards are not precarious per se, but the example illustrates the dynamic of how the social partners attempts to close gaps in the sector.

[16]Unless noticed the figures in this section is based on own calculations based on The Danish Agency for Labour Market and Recruitment public figures.

Since the Eastern European EU enlargement in 2004 and 2007, a large number of Eastern European companies and individual workers – especially from Poland – found their way to the Danish construction sector both as a consequence of the free movement of labour, but also because of the financial boom in Denmark, where especially the construction sector was in need of manpower (Hansen & Andersen 2008:13-17). From 2004 to 2009 special regulations concerning individual labour migrants from Eastern Europe existed (Østaftalen), which stated that migrant workers had to be employed on terms and conditions in accordance with the collective agreements. The Østaftale only included individual labour migrants employed in Danish companies and not foreign companies or the employees they posted in Denmark or persons who wanted to work in Denmark as self-employed and for this group it soon became evident, that their wage and working conditions were not in line with the collective agreements (Andersen & Pedersen 2010:4). For this reason, the before mentioned RUT-register was established in 2008 (Hansen & Andersen 2008:13; Andersen & Felbo-Kolding 2013:24-25).

According to the interviewee from Danish Construction Association (an employers' association in the construction sector), the unions have access to the information in RUT and they use it to locate foreign companies at the different construction sites. They then present the company with a claim for signing a collective agreement, if they have not already signed an agreement. According to the interviewee, this is a very effective instrument because it means that foreign companies do enter into the collective agreements, because they are not interested in the unions to take on industrial actions. Since 2010, the so called '48 hour meetings' have been a part of the collective agreements and it means that the unions and the employers try to solve the problem within 48 hours so that no long work stoppage will take place.

According to the interviewee from the Danish Construction Association, these efforts have resulted in a situation where almost all Danish construction sites have signed collective agreements and according to him, this area is not problematic anymore. He believes that the real problems are to be found when small foreign companies or one man business conducting work for private families. These firms are seldom registered in the RUT-register and they are therefore difficult for the unions to locate. On the other hand, the interviewee from the union 3F in the construction sector claimed that despite of the different initiatives, there are still problems with the enforcement of the collective agreements at some construction sites. In addition, he mentioned that there seem to be an increase in eastern European one man firms that coordinated bidding in limited liability company constructions consisting of several one man firms. Such one man businesses and coordinating firm constructions cannot have a collective agreement and are therefore not bound by the rules and conditions in the agreements, unless the union can prove that the one man firms are in reality working under instruction from an employer/entrepreneur. The union expect that this construction is de facto a cover for bogus self-employment, but it is difficult for the union to prove and the union is already overburdened by court cases related to breaches of the rules in the collective agreements.

Other sectors affected by cost-driven subcontracting

Other sectors affected by cost-driven subcontracting are: agriculture (in particular horticulture), restaurants and hotels, waste processing and collection, and the cleaning sector. We have already discussed and presented some of the results and tendencies in chapter 3 on non-regulated work, since much of the cost-driven subcontracted work is done without any collective bargaining coverage. Since we have already

discussed some of these cases, here we just emphasise the currently most prominent case: horticulture, but also cleaning which also is quite affected. In parts of horticulture the Danish wage formation model seems to have been almost dismantled resulting in a highly dualised labour market. In the industry the large majorities of low-skilled manual work: harvesting, picking, planting, etc. of tomatoes, cucumbers and onions are done by subcontracted labour migrants with hourly wages of 50-60 kr. This is less than half of wages stipulated in the collective agreements. The system has become systemised. When the unions issue a conflict (blockade) warning against one of the subcontractors, the hiring firm replaces the conflict-affected company with another. Several of the firms that receive a conflict warning have file for bankruptcy. So this seems to have become the standard model for this segment of the labour market and some similar agricultural sub-fields such as cutting of decorative greenery and trees for Christmas.

Cleaning has also been strongly affected by cost-driven subcontracting. Much public cleaning has been outsourced and subcontracted often with the aim of reduce costs. This has led to some very grave instances of dire working conditions and very low wages for migrant workers (Refslund 2014). In addition, some owners of small cleaning companies have been sentenced up to two years in prison for taking advantage of labour migrants, e.g. taking control of their wages as well as their freedom to travel back to their home country. However, following large media and public attention as well as organisational attention, it seems for now that the overall tendency in the industry is towards a better state of working conditions. In cleaning, the majority of work is covered by collective agreements, because some major large cleaning companies dominate the marked (such as ISS).

Waste collection experienced a surge of cost-driven outsourcing in the 1980s and 1990s, and the large majority of the work in e.g. waste collections is conducted by private subcontractor or public-private partnerships. The sector is strongly organized and has wide coverage of collective agreements. Therefore, although the waste collectors' conditions became less favourable by moving from public to private collective agreements, there is to our knowledge very few, if any, systematic gaps that leads to precarious work except for accepted conditions related to the character of the work (unsocial work hours) and the conditions for temporary employees (on hold with no guarantee for work) (Sørensen and Hasle, 2011). Unlike the Danish construction sector and the situation in the waste sector in Norway, where many East Europeans have been posted, there have been virtually no challenges posed by posting or migrating workers. This is most likely closely related to the clearly defined wage terms in the agreements and the strong social ties between workers in the sector.

Summary

Cost-driven outsourcing to some extend disrupts established industrial relations in the sectors. In some cases, it is used by employers to escape collective agreements. In the Danish system, where the collective agreements de facto defines the standard employment, escaping collective agreements increases the chances that gaps open or widens. However, as there is typically only one collective agreement in a sector, benefitting from outsourcing within a sector is difficult unless the unions are weak, or if agreements can be circumvented. The examples from strongly organised sectors such as construction and waste show that the social partners are able to close gaps and to "convince" new-comers to sign agreements. However, free movement of labour in EU and posting of workers challenges the IR-model by using the agreements to the

(lower) limits or by not honouring the terms, and un-declared work and bogus self-employment challenges the model by circumventing the agreements.

The examples from weakly organized sectors such as horticulture and restaurants shows that when unions have no power to pressure Danish or foreign companies to sign agreements, the Danish model have few lower limits. When unionisation in the sectors is low as in most migration segments, this is problematic for the model, since the unions have low or no knowledge about the conditions and only limited resources to engage in all companies, in particular small and remote worksites. Unions can raise claims for collective agreements etc. without having in members in the affected company, but legitimacy and interest are stronger when they represent workers at the actual worksite. The unions remain strong in the bigger cities. So in these sectors, cost-driven subcontracting has a completely different effect. It opens for social protection and integrations gaps with conditions that would be unacceptable for most Danish workers with a life perspective of growing old in Denmark, but that migrant workers may accept, because they have a different life perspective and different working conditions expectations. However, as long as they work and live in Denmark, the conditions are clearly precarious. The weakly organised sectors have few enforcement gaps, because only few rules apply (the general laws mentioned in chapter 2). Similarly, except for the working environment act, there are no requirements of representation, but there is a representation gap in the sense that there are next to no local representatives.

To summarize, cost-driven outsourcing both expose strength and weaknesses of the Danish IR-model. When it works, when the unions are strong and the social partners collaborate, it is quite effective in eliminating gaps. When it does not work, it opens a lot of gaps and there are few possibilities of closing them, especially because the politicians and social partners are very reluctant to use legislation as a solution (e.g. agreement extension or minimum conditions). The relatively generous social benefits set a floor, but migrants with other reference points and little knowledge of the Danish IR-model may (temporarily) accept conditions that deviate from normally Danish expectations and this put a pressure on all employers, even if they favour the generally accepted conditions on the labour market.

7. Conclusion

In the Danish labour market, core employment conditions are mainly regulated through collective agreements, which are supplemented by legislation. The regulative setting covers the majority of the workforce. The Danish welfare system provides comparatively high social security standards. Employees in part-time work, fixed-term employment, and temporary work agencies have similar rights and the same level of protection as in a standard, open ended contract. However, some protective gaps exist.

There are a number of protective gaps related to low levels or lack of collective agreements and organisation. Lowly or unregulated areas are mostly located in certain segments of the labour market. The majority of the workers who are not covered by collective agreements are most likely working on terms and conditions resembling the collective agreements. Nonetheless, some employees work without collective agreements and significantly below the stipulated levels. Foreign labour is overrepresented in these areas, and some work at very low wage levels. Often the labour migrants are not aware of their rights and they fear the consequences if they speak up. Small and dispersed work-sites are also more vulnerable.

Part-time work is generally not considered to be precarious. However, we identified protective gaps for some groups of part-time employees working very short hours, which exclude them from rights and protection and make it harder to become eligible for unemployment insurance benefits. For this group, we found in-work regulatory, representation and social protection gaps. In addition, some collective agreements accept levels of part-time that decrease the employees' possibilities of building sufficient tenure for unemployment benefits. The collective agreement, therefore, does not always close potential social protection and integration gaps. However, it affects very few employees.

Less than 11 % work on fixed-term contracts and in temporary agency work in Denmark. There are tendencies of certain protective gaps for temporary workers in terms of less protection and less access to certain rights and benefits. This tendency is particularly pronounced on the unregulated part of the labour market. Foreign employees, who are not aware that the rules and legislation, which make them particularly vulnerable. Access to rights and benefits are not earned if contracts are very short.

Employers can use cost-driven outsourcing to escape collective agreements, and in the Danish system, where the collective agreements de facto defines the standard employment, escaping collective agreements increases the chances that gaps open or widens. Examples from strongly organized sectors show that the social partners are able to close gaps, however migrant and posted workers challenge the IR-model because collective agreements are pushed to the lower limits; un-declared work and bogus self-employment challenges the IR-model by circumventing the agreements. Examples from weakly organized sectors show that cost-driven subcontracting opens for social protection and integrations gaps, are there is a representation gap because there are few local representatives.

Cost-driven outsourcing exposes strength and weaknesses of the Danish IR-model. When the unions are strong and the social partners collaborate, the model quite effectively eliminates gaps. When it does not, gaps open and there are few possibilities for closing them. The relatively generous social benefits set a floor, but migrants with other reference points and little knowledge of the Danish IR-model may (temporarily) accept conditions that deviate from normally Danish expectations and this puts pressure on all employers, even if they favour the generally accepted conditions on the labour market.

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Part 2. Case studies of Social Dialogue initiatives targeting precarious work in Denmark

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1. Introduction

This project report is part of the Precawo project and has been completed in joint collaboration between Centre for Industrial Production, Aalborg University and the Employment Relations Research Centre (FAOS) at University of Copenhagen, Denmark. The report explores how social dialogue can help reduce precarious wage and working conditions in the Danish labour market by drawing on three distinct cases studies. In this context, the term social dialogue, has quite different meanings, not least in distinct national settings, but also within the same national setting. In this project report, we adopt a rather broad approach to the term social dialogue which is in line with the overall understanding of the term in the Precawo-project. Therefore, in order to cover as many aspects as possible under the broad term of social dialogue, we have included three very different case studies - each one focusing on a different perspective of social dialogue such as unilateral actions by trade unions, bipartite collective bargaining and tripartite consultation, involving public authorities, trade unions and employers associations.

The concept of precariousness is defined in accordance with the focus of the overall Precawo research project and covers three main protective gaps; *1) regulatory gaps*, 2) *representation gaps* and 3) *enforcement gaps*. *Regulatory gaps* concern employee's eligibility to social benefits, where various thresholds may restrict some employee groups access, as well as the level and scope of minimum standards regarding pay, holiday, working time, pension etc. Other forms of regulatory gaps entail the lack of mechanisms to regularly adjust wages and social benefits in accordance with costs of living and average earnings, along with various practices restricting employees' opportunities of further training, pay increases and moving from flexible forms of employment to more permanent positions. *The representation gaps* cover low collective agreement coverage, weak employer's organisation, low union densities, weak or lack of institutions for collective representation for specific employee groups at sectoral, workplace and supply chain levels, along with rules and regulations limiting employees' access workplace councils, sectoral and workplace bargaining units based on their employment contract. *Enforcement gaps* refer to employees'

unawareness of their social and employee rights, limited or ineffective follow-up procedures to monitor compliance with existing rules and regulations, low sanctions for non-compliance, lack of protection for whistle-blowers along with the unregulated labour market like the informal economy (Bradshaw et al., 2015).

The three case studies in this report deals with different aspects of these protective gaps and explores how social partners have handled such challenges through distinct forms of social dialogue (see table 1 for an overview).

Table 1: Overview of the three case studies

	Sector	**Employee groups**	**Types of Protective gaps**	**Form of Social dialogue**	**Initiatives**
Case study 1	Local government sector Industrial cleaning Construction	Subcontracted workers	Enforcement Minimum rights	Tripartite consultation btw. unions, local authorities and employer associations	Public procurement practices Follow-up procedures
Case study 2	Fishing industry construction	Migrant workers	Representative gaps Minimum rights	Unilateral actions by unions	Organising efforts Industrial actions
Case study 3	Manufacturing TAW Sector	Temporary agency workers	Regulatory gaps Minimum rights Eligibility	Bipartite collective bargaining Tripartite consultation btw. user-companies, TWA's Unions	Set-up of Joint task force Collective agreements Company based responses

The first case study deals with the use of labour clauses in public procurement, where we examine the implementation of such labour clauses and their effects in terms of ensuring wage and working conditions according to the standards outlined in the collective agreements and Danish labour law, using the municipality of Copenhagen as the empirical example. In this context, we analyse two specific sectors – industrial cleaning and construction - as they are the two main areas together with transport, where the municipality of Copenhagen has applied labour clauses in public procured work. However, we also draw parallels to other parts of the Danish public sector in order to compare the situation in Copenhagen with other Danish municipalities. The process behind labour clauses has mainly been initiated and driven by the political system in Denmark. This is true both at the municipal level and the national level. In the case of Copenhagen Municipality, the mayor and the city council in Copenhagen has played a significant role in the implementation; whilst at national level, the former Social democratic government played a key role in enacting the new regulation of the use of labour clauses in public procurement, which came into force in 2014.

The second case study concerns Danish trade unions' efforts to organise labour migrants, in particular unions in construction and 3F (the main union mainly organising lower-paid manual workers in construction

but also other areas). This case study involves mainly the perspective of unions as well as the workers facing increased risks of precarious wages and working conditions, which in this case is the labour migrants.

The third case study explores the recent development of temporary agency work (TAW) within the manufacturing sector and how social partners have dealt with the associated risks of precarious working conditions among temporary agency workers at sectoral and company levels, respectively. The main focus is on the set-up, implementation and usage of the social partners' joint task force that formed part of their settlement during the collective bargaining round within the manufacturing sector in 2014. The task force aims to offer advice on ways in which companies can use TAW and how they can exploit the various opportunities for flexibility within the collective agreement covering the manufacturing sector. Therefore, the case study includes the perspectives of not only the social partners representing employers and employees at sectoral and company level within manufacturing, but also the views of individual temporary work agencies and their employer associations.

All in all, the three case studies are examples of very different forms of social dialogue with the first case study being largely driven by the political system, whilst the second case study is an example of a unilateral response initiated by trade unions and the third case study is an example of a joint social partner initiative through the collective bargaining system. However, all three case studies have significant elements of social dialogue, albeit in various forms. In the first part of the Danish national Precawo report, we argue that wage and working conditions that are covered by a collective agreement cannot generally speaking (although with some, notable exceptions) be understood as precarious in Denmark. The three case studies also reflect this, as they - in one way or the other - relate to the Danish collective bargaining system.

The first case study reveals that labour clauses in public procurement tend to follow the standards set in the collective agreements, while the second case study on unions' organsing efforts deals with ways to make migrant workers part of the Danish industrial relations system, and hence increase both union densities and collective agreement coverage. The last case study regarding the implementation of the social partners' joint task force within manufacturing stem from their collective agreement. Hence, the three case studies, relate to the Danish industrial relations model, where wages and working conditions primarily are regulated by collective agreements negotiated and signed by social partners at sectoral and company levels. However, our case studies also indicate that this traditional way of regulating wage and working conditions is being challenged. For example, the usage of labour clauses in public procurement challenges implicitly social partner's rights to decide wages and working conditions autonomously as they demand private contractors to follow certain wage levels and sometimes other labour standards which typically are regulated through collective agreements. Likewise, TAW also tests the Danish bargaining model, since the collective agreements typically are suited for full-time employment rather than non-standard types of employment (Larsen, 2011).

The report consists of five chapters. The second, third and fourth chapter present the case studies with the first being on public procurement and labour clauses, which is then followed by unions approach to organising labour migrants and the third case study concern how social partners have dealt with TAW within manufacturing. Chapter five sums up the main findings and highlight some of the patterns identified cross the three case studies.

Methodologically, the three case studies draw on data gathered through semi-structured interviews as well as secondary sources such as policy documents, reports from union and employer associations, media reports, collective agreements and past research studies. As part of the project report, a total of 42 interviews have been conducted with representatives from trade unions, employer associations, local union branches, shop stewards, local managers, temporary work agencies and migrant workers. The interviews were conducted between March and August 2016 and all interviews were recorded and then summarised. In each of the case studies we interviewed experts and key actors at national, sectoral and company level.

2. Case study 1: The use of labour clauses in public procurement

Introduction

Public funds allocated to private operators through public procurement and through increased use of outsourcing of public service provision are a growing phenomenon in most European countries. The recent economic crisis appears to have reinforced this development, since the crisis in general and the subsequent austerity policies in particular have resulted in strains on public finances across Europe (Marino et al., 2017; Grimshaw et al., 2015; Schulten et al., 2012). The public procurement of services and goods as well as outsourcing aim to reduce costs and/or increase productivity e.g. increasing work pace or efficiency, which may lead to downward pressure on wages and working conditions for the workers affected and, hence, increased precarious labour market positions (Grimshaw et al., 2015; Hermann and Flecker, 2012; Schulten et al., 2012). This has led to an upsurge in how the state and other public authorities can act "as a responsible customer" (Jaehrling, 2015) with a growing public and academic interest in the usage of labour clauses and social clauses in public procurement. Labour clauses entail demands by the public authorities that the private contractors follow certain wage levels and/or other labour standards outlined in the labour law and/or collective agreements when carrying out work for the public sector. The public authorities' demands can also include that the private subcontractor employ a certain share of employees with special needs or apprentices as well as other types of so-called social clauses.

Public procurement and labour clauses have also gained increased attention in Denmark at the governmental, regional and municipality level and among social partners. Some prominent cases of very poor working conditions and low wages among (mainly foreign) workers working for the public sector through private operators e.g. in industrial cleaning have propelled the issue high up on the agenda of social partners and public authorities (Refslund, 2014).

This case study examines how labour clauses on public procurement have been initiated, developed and implemented in Denmark, using the municipality of Copenhagen as the empirical example. We use Copenhagen as an example, mainly because this municipality has often been highlighted as the good example of its usage of labour clauses in public procured work and tends to take the lead within this area – not least with respect to formalising the social dialogue with social partners and implementing follow-up procedures to ensure private contractor's compliance. However, in the case study we also draw parallels to the broader development of labour clauses in Denmark; in particular the development at the national political level, which has been important for the implementation of labour clauses in public procurement within Copenhagen. The municipality of Copenhagen also use social clauses in their contracts with private contractors regarding the number of apprentices in the companies performing public jobs as well as a CSR-policy on human rights, environment etc. However, in this case study, we only focus on the implementation of labour clauses and their effects to prevent precarious employment as well as the involvement of social partners in this process.

The case study is structured as follows: First, we briefly present the recent development of labour clauses and public procurement in the Danish public sector, before focusing on the usage of labour clauses in the municipality of Copenhagen. We then turn to two specific sectors – industrial cleaning and construction – as they are the two main areas together with transport, where the municipality of Copenhagen has applied labour clauses in public procured work.

Labour clauses and public procurement in the Danish public sector

Recent figures estimate that the Danish public authorities spend almost 300 billion Danish kroner on public procurement of work, goods and services – corresponding to 15 per cent of the Danish GDP in 2014 (Konkurrence and forbrugerstyrelsen, 2015: 4). When Danish public authorities outsource services, the employees often work under different collective agreements or in some instance without collective agreement coverage, even if they still work at the same place as earlier, since their employer has changed (Mailand and Larsen, 2014). In this context, the collective agreements covering the private sector often offer less generous social benefits. In case the private contractor is without collective agreement coverage, the employees' wages are regulated by individual agreements between the workers and the employers since Denmark has no statutory minimum wage and/or extension of wage levels from the collective agreements. Employees without collective agreement coverage also have lower levels of social benefits, since these are regulated by Danish labour law rather than the collective agreements that in general offer more generous social benefits. Therefore, outsourcing of public services to private contractors entail increased risks of precious employment, which also a number of recent Danish court rulings and research studies confirm (Refslund, 2014; Petersen, 2014; FOA, 2014).

Denmark signed the ILO convention 94 on labour clauses in public procurement in 1949 and ratified it in 1955 (Schulten et al., 2012: 13) However, the impact of ILO convention 94 was considered limited by the interviewees up until 2014, mainly because of limited enforcement mechanisms and relatively unclear rules on the usage of labour clauses in public procurement. In 2014, the former centre-left government through the Ministry of Employment passed a new "Circular on Labour Clauses in Public Contracts" [17], which clarified the rules on using labour clauses in public procurement and clearly outlined the overall framework for labour clauses. The circular follows the ILO convention 94, which establishes that collective agreements can be the point of reference for the wages and working conditions set in the labour clauses. Thus, Danish circular on usage of labour clauses from 2014 stipulates that the subcontractor or supplier should apply wages and working conditions similar to the terms outlined in the representative national representative collective agreement in the particular sector. However, the labour clause cannot specify that the supplier has to sign a collective agreement, but they have to adhere to the terms and conditions listed in the collective agreements. In this context, while collective agreements are directly linked to union activity, it covers all employees – union as well as non-union members at the workplace, if a company has signed a collective agreement (Due and Madsen, 2006). However, many union representatives – nearly one in two - choose not to represent the interests of their non-unionised colleagues during company based bargaining and they are not obliged to assist non-unionised workers in case of discrimination and/or other work-related disputes (Navrbjerg and Larsen, 2011).

[17] Available in English at: http://bm.dk/~/media/BEM/Files/English/Cirkular%20on%20labour%20clauses%20pdf.ashx

Furthermore, the circular by the Ministry of Employment issued in 2014 also stipulates that only central authorities such as ministries, executive agencies, etc. are obliged to apply labour clauses in all public procurement, whilst the Ministry of Employment recommends regional authorities and Danish municipalities to implement labour clauses in public procured work (Ministry of Employment, 2014). Part of the circular also establishes a form of chain liability within public procured work carried out for central authorities, as the circular stipulates:

> *''The contracting authority must set requirements in the contract to ensure that workers employed by contractors and any sub-contractors who contribute to the performance of the contract are secured pay (including special allowances), hours of work and other working conditions which are not less favourable than those established for work of the same character under a collective agreement entered into by the most representative organisations of workers and employers in Denmark in the trade or industry concerned being in force throughout the Danish territory."(Ministry of Employment, 2014 paragraph 3).*

Regarding regional and local authorities, the usage of some form of chain liability as part of public procured work is optional for such public authorities (Ministry of Employment, 2014). The application of some form of chain liability is, however, in line with ILO 94 and is considered pivotal to ensure the effectiveness of the labour clauses by some of the interviewed union representatives. The employers, including some Danish municipalities, are rather critical regarding the usage of labour clauses and tend to oppose the very idea of chain liability for political reasons according to the interviewees. In this context, the employers frequently stress the potential clashes with the basic principles of the Danish industrial relations system, where wage and working conditions are regulated primarily through collective agreements signed by social partners at sectoral and local levels (Knudsen, 2016). According to the interviewees, when public authorities' demands that private contractors have to follow a certain wage level, they indirectly intervene in the self-autonomy of social partners to decide specific wage levels, which is of great concern among many Danish companies and their employer associations. Moreover, the employers also tend to emphasise that labour clauses place too high demands on the companies (interviews, 2016). However, also within the Danish trade unions do we find that some parts of the Danish union movement being rather sceptical towards the usage of both labour clauses and chain liability in public procurement. The unions concerns are among others down to the lack of enforcement mechanisms, which question the effectiveness of labour clauses in terms of preventing precarious employment. Also the potential clash with the voluntaristic Danish IR-model and EU regulation have been subject to discussions within parts of the Danish trade union movement.

The potential clashes between labour clauses, the Danish IR-model and EU legislation

Labour clauses may have a greater relevance in securing minimum wages in labour market settings without statutory minimum wages or extension of the wage terms from collective agreements such as Denmark and Sweden. Thorsten Schulten and colleagues claim; "*In some respects, pay clauses in procurement can be seen as a substitute for legal extension mechanisms*" (2012: 105). However, there are also some inherent tensions between the legal approach to regulation of public procurements and the self-governance of the Nordic labour markets, where wage and working conditions are primarily regulated through collective agreements signed by social partners at sectoral and local levels (Bruun and Ahlberg, 2014). There have been quite widespread European concerns as well as confusions as to the judicial stance on the usage of labour clauses in public procurement, not least following the 2008 Rüffert-ruling by the European Court of

Justice (ECJ) . Nonetheless, the ECJ has clearly stated in the rulings on labour clauses that public concerns over wages and labour conditions can be a legitimate public interest addressed through labour clauses.

The Danish judicial position on labour clauses was also somewhat uncertain until 2014, but the new circular issued in 2014 clarified the Danish application of labour clauses. However, despite the recent clarification of the Danish legislation, it continues to be debatable to what extent Danish procurement regulation is in line with EU regulation. The Danish regulation emphasises the ILO 94 convention rather than European legislation and the ECJ-rulings in particular the Rüffert ruling; and in this context it is uncertain how EU-legislation relates to the ILO 94 convention. However, according to EU law, conventions such as ILO 94, which have been signed and ratified before the EU treaty, takes supremacy over European legislation. So here the Danish position seems somewhat clear compared with EU legislation. Nonetheless, the Danish social partners (this was stated explicit during the interviews with both the employers' organisation and the unions) are very reluctant to take any case to the ECJ, because they feel that the outcome of these trials are highly uncertain compared with the Danish court system, where they feel they have a good chance of estimating the probability for winning or losing a case.

Labour clauses and public procurement – the case of Copenhagen

While it is mandatory for governmental organisations to apply labour clauses in public procurement, it is voluntary for the regions and municipalities as mentioned earlier. However, a 2015 survey from the municipalities own organisation (Local Government Denmark - KL) revealed that 90 per cent of all Danish municipalities apply labour clauses on public procured construction work and other relevant areas when considered appropriate, and 70 per cent always or often use labour clauses in public procurement (KL, 2015). Most municipalities - 67 per cent –draw to a high or very high degree on the guidelines issued by the Ministry of Employment from June 2014, and KL has also developed various guidelines, information pamphlets etc. to assist Danish regions and municipalities in their application of labour clauses. (KL, 2015: 5-6; Interviews, 2016).

The Municipality of Copenhagen is no exception and in 2014 the municipality revised its guidelines on labour clauses in public procurement along the lines of those issued by the Danish Ministry of Employment. However, the Municipality of Copenhagen had already started to systematically apply labour clauses in public tenders throughout the municipality in 2011 and had already in 2005 clauses on corporate social responsibility in their contracts on public procured work, which entailed regulations to ensure compliance with Danish anti-discrimination and equal treatment laws (Copenhagen Municipality, 2014). In some areas such as industrial cleaning, construction and transport even earlier examples exist as to public tenders including clauses on employees' wage and working conditions (Weigmann, 2001).

Since 2011, the labour clauses used by the Municipality of Copenhagen have been revised as to their content, scope and follow-up procedures. In November 2013, the revisions entailed among others a strengthening of the municipality's rights to acquire documentation from the supplier and access to their premises, if suspicion of non-compliance. The municipality also added clauses on their rights to use economic sanctions, withhold payments and cancel the contract in case of non-compliance. Moreover, the private contractors were requested to provide ID-cards for their employees and inform their subcontractors about the labour clauses. Despite these revisions, the Municipality of Copenhagen was

reportedly in a somewhat judicial limbo up until the Danish Ministry of Employment issued their circular on labour clauses in 2014 (interviews, 2016). Besides updating their rules, the Municipality of Copenhagen also started implementing a control unit or inspectorate– a process which took place in close collaboration with social partners according to the interviewees. The control unit has been delegated to an external and independent company Bureau Veritas, who is responsible for inspecting the subcontractors subject to the labour clauses of municipality of Copenhagen.

The control unit employs four full-time employees, and they can approach all subcontractors (one of the employees working in the control unit as well as the senior manager in charge of the tasks was interviewed). So far the municipality of Copenhagen has been at the forefront among the Danish municipalities, especially when it comes to controlling the implementation of labour clauses. Indeed, some interviewees expressed that prior to the changes in 2014, the labour clauses were mainly (and still are in many municipalities which have not implemented control mechanisms to ensure compliance) declarations of intent, rather than practical tools in everyday labour market regulation. One interviewed union worker stated;

> "*Before these* [national] *changes, the labour clauses had a very limited impact mainly because of the lack of control mechanisms".*

Prior to 2014, there were no control mechanisms and the regulation on labour clauses in public procurement was formulated in very broad and general terms, whereby the practical implications appeared limited according to the interviewees. The most recent revisions in Copenhagen took place in 2016, where the municipality commissioned a law firm to review the possibilities for extending labour clauses to areas of other public funded work such as private day care etc., and the municipality decided to extend the usage of the usage of labour clauses to such areas where possible (Interviews, 2016; Municipality of Copenhagen, 2016a; 2016b).

The application of labour clauses in the municipality of Copenhagen has – similar to elsewhere in the public sector - to a large extent been driven by the political system, where also trade unions have intensively pushed for strengthening the usage of labour clauses, including their scope, content and follow-up procedures. This has not only been through lobbying, but also through the various collaboration committees set-up at public workplace level by legislative demands. It is particular a series of incidents with underpayment, poor working conditions far below the standards outlined in the collective agreements and the Danish labour law - along with other forms of fraud with public funds, mainly within outsourced service tasks and construction - that have pushed the issue of labour clauses further up on the political agenda of local authorities and social partners, not least during the local government election in 2013. In the case of Copenhagen, the Social-democratic mayor has frequently raised the issue of labour clauses in the public debates and in the media as well as during his 2013 re-election campaign.

In fact, nearly all interviewees stated how the political dimension has been pivotal in driving the agenda on labour clauses not only in the case of Copenhagen, but also elsewhere in the public sector. The city council in Copenhagen is dominated by Social democrats and left-wing parties, and they have repeatedly pushed the agenda on labour clauses in Copenhagen. However, the political process has also been dominated by strong inputs from particular the trade union movement in construction and industrial cleaning. In 2014, the municipality decided to set up formal social dialogue forums with regional representatives from the

trade unions and employers associations in the areas of construction, industrial cleaning and housing. The municipality is represented by the director of the Economic department, which shows the emphasis given to the topic by the municipality. Indeed, there are numerous elements of social dialogue, where the municipality of Copenhagen –similar to other Danish public authorities - have regularly involved unions and employers associations regarding the development, implementation and enforcement of labour clauses according to the interviewees. However, the extent of the social dialogue in the dialogue forums may be limited as indicated by some of social partners within construction – in particular the employers' organisation (interviews, 2016).

Sector analysis – construction

Introduction to the sector

Construction is an important economic sector in the Danish economy and public construction makes up a significant contribution of overall construction industry. In these years, Danish public authorities are conducting several large construction projects, including a new Metro ring in Copenhagen, new large centralised hospitals (so called super-hospitals), a planned new tunnel to Germany and numerous residential and commercial city development projects, not least in Copenhagen, where the population is growing at a rather significant pace. All public construction work is procured from private providers, which makes the labour clauses highly salient within construction.

Collective agreement coverage and union densities

The social partners in construction in Denmark are still comparatively very strong. As an interviewee in the sector puts it; "*Here the Danish model is still vibrant*" (interviewee, employers' association construction). Several of the interviewed union workers stated that the unions in construction are still strong enough to not accept any larger construction sites not being covered by collective agreements and all sites of a certain size are covered by collective agreements. This was also confirmed by the interviewed employers' association. This is based on a strong presence of the construction unions combined with a coordinated industrial relations effort. In 2008 the unionisation rate for construction workers in Denmark was 73 per cent (Due et al., 2010: 100) and 85 per cent of companies with five or more employees were covered by a collective agreement (Larsen et al., 2010: 258). If the unions come across sites without collective agreement, they typically propose to the companies involved to sign a collective agreement. However, if an agreement cannot be reached, the unions will often take industrial action as the next step – typically by issuing a strike or blockade warning. Since the construction unions coordinate their industrial actions and include other crafts, their actions can be very effective according to the interviewees. If a subcontractor on a large site does not have a collective agreement, it can cause troubles for the entire project. When the unions include other trades in the industrial action, this can often lead to the main contractor on large construction projects will tell a subcontractor to straighten things out with the union typically by signing the collective agreement. Otherwise they will find another supplier, since they cannot afford the unions shutting down production. Concrete and installation work are particularly vulnerable to blockades.

Rising numbers of foreign workers and companies

Construction has comparatively a high share of foreign workers, including posted workers as well as foreign firms, which gives the labour clauses a more prominent position. Many foreign firms operating in Denmark e.g. on the construction of the new Metro Circle line in Copenhagen can have difficulties in understanding how the Danish labour market functions, in particular the absence of legislation on wages (Arnholtz and Andersen, 2016) . However, here the unions – not least the concrete workers' union helps the foreign firms to obtain a "*sharply increasing learning curve*" as an interviewee from an employers' association puts it. The labour clauses are also considered very helpful in such situations, since they commit the foreign firms to comply with the collective agreements, which also make it easier for the unions to approach the firms with their claims. As a union worker expressed it;

> "*The labour clauses forces the foreign companies into the pitch, which they may otherwise, have been somewhat reluctant towards"* (interview, union worker national union for construction workers).

The strong effects of industrial actions by the construction unions have resulted in that companies (in particular foreign companies) have joined the employers association (Interview, 2016). In the collective agreements covering the construction sector, there is a fast track tool for solving problems with the foreign firms; the so- called 48 hours meeting. If the unions have the suspicion that a company is breaching the collective agreement then a meeting with the involved company, the unions and the employers' association should be set up within 48 hours in order to try to solve this problem. These meetings are a very efficient tool for the unions.

However, in order to convince companies to sign a collective agreements, it is mainly up to the unions to find these companies, and here one of the interviewed union workers in construction would like further support from labour clauses as well as from the employers' side. As already mentioned in the part one report, it is often much easier for the unions to target larger project and sites, especially with long-term production in the same site like the Copenhagen metro. Smaller, changing and remote work sites are much more vulnerable in terms of precarious working conditions than the larger ones in the Danish industrial relations model, and the small sites are also less relevant when it comes to labour clauses, since almost all public construction are larger projects.

The application of labour clauses in the construction sector in Copenhagen

Construction is by far the sector, where the municipality's control unit - Bureau Veritas - has made most inspections. An overview provided to the municipality from the control unit in early 2016, reveals that 80 per cent of all inspections took place within construction. So construction is highly affected by the labour clauses. At the same time, the importance of labour clauses has been growing in other public construction projects such as the Copenhagen metro project, but this is a joint venture between various public partners, so the Copenhagen municipality control unit - Bureau Veritas - is not allowed to inspect these contracts. In this context, it seems to make a clear difference whether the implementation is inspected or not when comparing construction projects that are outsourced solely by the Municipality of Copenhagen and thereby subject to inspections with those construction projects that involve other public authorities such as the building of the new metro ring in Copenhagen. One of the national union workers stated;

> "*Without the control the labour clauses are not worth anything*".

Therefore, the control efforts from the external provider appear to be vital. All in all, 1280 persons had been included in the controls from the start in October 2014 until the end of 2015. Bureau Veritas are allowed to inspect all public construction sites as well as other work funded by Copenhagen municipality and the inspected firms have to supply the relevant documentation for wages, working hours and other pay issues. The inspections are based on a risk assessment by Bureau Veritas, so that work involving low-pay areas, night work, hard and filthy labour processes, low-skilled work and foreign workers have their top priority (interview data, Bureau Veritas). There is also a hot-line, where it is possible to make anonymous tips on potential breaches of the labour clauses; however they did not receive so many tips on the hot-line. After the inspections the company make a report, which they send to the municipality who then takes action towards the companies. Based on the inspections all in all 41 reports were produced and of these 22 were lack of documentation, which could be straighten afterwards. 19 cases involved breaches of the labour clauses and in general the issues raised minor issues with a few exceptions.

However, the interview data also indicates that there are very significant differences between the main contractors (both the public and the private ones) and in particular their approach to the labour clauses (as well as the industrial relations in general and the unions in particular). Some public contractors – such as Copenhagen municipality – put great emphasis on the application, while others are more concerned with the cost level of the construction project, which again highlights the political dimension.

The Copenhagen municipality has established two high-level dialogue forums – one for construction and one for cleaning (as well as a forum on housing for migrant workers). However, the interviewees from the social partners perceived these as more of an information forum rather than a forum for direct negotiations or consultation as would be norm in many aspects in the regulation of the Danish labour market. Especially, the largest employers' association in construction (DB) does not feel that they have been included in the process of defining the regulations on labour clauses, nonetheless the employers' association still feel they have had a fine dialog with both the municipality and the mayor (Interview data).

The largest employers' association in construction is in general not happy about the use of labour clauses in Copenhagen; they feel it is too much interception in the labour market and that the labour clauses are too extensive compared with the collective agreements, while the smaller employers' association (often representing smaller firms) is more positive. In addition, Danish employers associations in general fiercely oppose very idea of chain liability according to the interviewees.

The outcome of the application of labour clauses

Based on the interview data, it appears that the labour clauses have had a positive impact on working conditions in the construction industry and has helped reduce the overall precarity and contingency of the workers. Of the 19 cases of problems with the labour clauses only a handful or so were about more severe breaches of the collective agreement, with two cases ending with the municipality not renewing the subcontractors' contract, but most of the other cases were solved by correcting the problems e.g. paying the missing wage add-ons etc. The issues were typically solved through a dialogue between the municipality and the subcontractors. In general the comparative level of worker precarity within public procured construction work in Copenhagen appears to be at a very low level, in particular when compared with other segments of construction mainly smaller companies and projects as well as other economic sectors (cf. Refslund, 2014; 2016).

All interviewed social partners were convinced that the labour clauses have had a preventive effect on companies and employers bidding on tenders in the Copenhagen municipality, e.g. not cooperating with dubious sub-suppliers when working on tasks for the municipality. The chain liability has also resulted in the main contractors putting pressure on sub-contractors to secure compliance with the terms in the labour clauses and, hence, the collective agreements. Therefore, the public attention and discursive effect on potential "abuses or breaches" of the labour clauses has had an important impact according to nearly all interviewees. The unions feel that they have won the battle over the public agenda on labour clauses through a quite coordinated effort by the construction sector unions, where they e.g. have approached local politicians in the local municipalities in order to discuss the application of labour clauses. The employers' associations are obviously also affected by the public attention and the media coverage, and they are not interested in any bad media publicity (interview employers' associations).

Some of the interviewed representatives from the employers' associations and unions in construction and industrial cleaning reported that they have companies joining the employers' associations in order to meet the labour clauses. It is often easier for the firm to join the employers' association, which makes it mandatory to follow the collective agreements, and then they can get assistance from organisation regarding the collective agreement. So the labour clauses are potentially also strengthening the incitements to join an employers' association.

The unions also emphasised that the labour clauses can help with union recognition (especially when working with foreign companies) and in general makes ease the union access to the work site and the workers. The labour clauses do – so to speak – force the employers and the companies onto the established playing field in the Danish IR-model – a job that otherwise is left more or less entirely to the unions. While some of the companies are "forced" into the dialogue or the collective bargaining, the process can still be very fruitful – it depends on the mind-set of the companies, where some companies accept the setting, whereas others are more critical (interview, union worker). In the light of a slightly weakened union movement with fewer resources and perhaps also less discursive powers labour clauses can be a very helpful tool for them. The labour clauses are supporting the function and vitality of collective agreements and the employers' associations have acquired new members due to the companies being faced by the labour clauses' demands. We also know that posted workers, of which a large share is working in construction, who are covered by a collective agreement, have significantly better working conditions than those not covered (Arnholtz and Andersen, 2016). However critics may claim that the labour clauses are only relevant because the Danish IR-model has been weakened, and the social partners, are unable to uphold the previous power positions.

However, having a collective agreement or a labour clause demanding work and pay on terms equal to the ones set in the most dominant collective agreements is no guarantee to prevent precarious employment, wherefore the control unit in Copenhagen has an important role. Several of the interviewed union workers reported various types of breaches of the collective agreements, ranging from more severe to minor issues. The Danish labour court often has to settle cases based on disputes over how to understand and interpret a collective agreement regarding wages or disputes concerning pay supplements such as occupational pension's contributions and holiday payments between the unions representing workers and companies. A union worker (in a different municipality) told about a Lithuanian carpenter company signing a collective agreement and then afterwards perhaps only complying with 20 % of the content (according to the union

worker), presumably not expecting the union to actually control whether they complied with the agreements. But this is also seen as one of the union's key task, and the control unit appears to ease their work.

Although the union workers in the construction sector consider labour clauses in public procurement as an important contribution and a helping hand to ease their work, their main concern is to be able to organise a significant share of the workers in the long-term, and thus, keep the union density high. Nonetheless, the unions feel that the labour clauses should to be further strengthened and the guidelines could be made even more clear e.g. recommendations from the municipality on how to apply the labour clauses in practice (interview construction workers unions). For instance, at the moment, if a company is found guilty in the labour court for violating the collective agreement, it is not enough for the municipality to claim a breach of the labour clause; this still has to trialed in a civil law suit. The unions would like to see that changed (interview union worker construction).

Sector analysis – Industrial Cleaning

Introduction to the sector[18]

The Danish industrial cleaning sector accounts only for a small fraction of the Danish economy. It employs 1,3 per cent of the workforce and is dominated by small companies – 70 percent of cleaning companies have less than ten employees in 2014 (Larsen and Mailand, 2014). The sector is also characterized by an overrepresentation of women (60 per cent in 2011), migrant workers (47 per cent in 2013), low-skilled employees without any educational credentials (52 per cent in 2014) and atypical workers –defined as employees not holding a full-time permanent position (DI, 2016: 17; 2011; Larsen and Mailand, 2014). In addition, industrial cleaning is highly labour intensive and covers various services, ranging from ordinary cleaning inside and outside buildings, window cleaning to specialized cleaning services like pest control in buildings and cleaning of swimming pools, trains and busses (Larsen and Mailand, 2014; Refslund and Thörnqvist, 2016: 66).

The cleaning services are provided by a number of suppliers in the private and public sectors. The local government sector employed 80 per cent of all industrial cleaners in the public sector in 2014 (DI, 2014; KL, 2014). However, since the 1990's, the public sector, including local government, has increasingly outsourced cleaning services to private companies, although some public authorities – for various reasons – also have insourced or kept such services in-house (Interviews, 2016; Quarts+co, 2014: 90; Petersen, 2011). Recent figures estimate that 55 per cent of cleaning services within the local government sector were up for public tendering in 2013; and that 62 per cent of industrial cleaners working within the local government sector were employed through a private company (Konkurrence and forbrugerstyrelsen, 2015: 18, Quarts+co, 2014: 90-91). However, wide variations exist across the 98 Danish municipalities as to the level of outsourcing of public cleaning (Konkurrence and forbrugerstyrelsen, 2015; Quarts+ co., 2014). In the case of Copenhagen, the municipality spends annually around 700 million Danish kroner on cleaning tasks, and only some of these services have been outsourced to private contractors (Municipality of Copenhagen, 2015).

[18] With permission from the authors this section draw heavily on work by Larsen and Mailand (2014).

When Danish local authorities outsource cleaning services to private contractors, the regulation of wage and working conditions changes, since the employees are no longer covered by the collective agreements of the local government sector. Their wage and working conditions are instead regulated by the arrangements and practices of the private contractor, which may not necessarily offer similar wage and working conditions and may not be covered by collective agreements.

Collective agreement coverage, membership of employers' associations and unions

The collective agreement coverage within the industrial cleaning sector is estimated to be around 40-50 per cent when measured in terms of numbers of cleaning companies covered by collective agreements. However when calculating the collective agreement coverage based on the total wage sum, the collective agreement coverage is considered somewhat higher in the private sector (Mailand and Larsen, 2014; Interviewees, 2016). In the public sector, all employees are covered by a collective agreement. However, many private employers – particularly small and medium-sized cleaning companies – may have signed a collective agreement, but have not necessarily joined an employers' association. No exact figures exist as to the number of cleaning companies having joined an employers association, but large and medium-sized companies are often members of an employers' association, whilst few small companies – notably self-employed without employees – have joined one (Mailand and Larsen, 2014). Regarding union density, 54 per cent of industrial cleaners were union members in 2011 (Toubøl et al. 2015) which is considerably lower than the general union density the Danish labour market – 68 per cent in 2015 – (Ibsen et al. 2015).

Wage and working conditions following outsourcing

Ample research reports of mixed results as to how employees' wage and working conditions are affected by public authorities' outsourcing of cleaning services to private companies in Denmark (Petersen et al., 2011; 2014; LO, 2001; FOA, 2014). Some studies stress that contracting out cleaning services may not necessarily entail negative implications for employees' wage and working conditions and give positive examples of improved skill levels, better management, innovative work organization processes and new cleaning tools following outsourcing of public cleaning (Petersen et al, 2011: 44; 2014: 33; Udbudsrådet, 2012). Two studies focusing explicitly on outsourcing within the Municipality of Copenhagen, but not exclusively on industrial cleaning, indicate that most employees' wages and working conditions have hardly changed after their jobs were outsourced to private contractors (Municipality of Copenhagen, 2012; Wiegmann et al. 2001). Other studies – the vast majority - reach, however, somewhat different conclusions as to the effects of outsourcing for Danish employees' wage and working conditions. They report of increased workloads, shorter working hours, higher stress levels, lower wages, less generous entitlements to social benefits as the collective agreements in the private sector offer less generous occupational pensions contribution, paid sick leave, maternity, paternity and parental leave than public sector agreements, along with higher levels of job dissatisfaction following outsourcing of public cleaning (Petersen et al. 2011; 2014; Mori, 2015; FOA, 2012a; Udbudsrådet, 2012: 19; Hermann and Flecker, 2012). The interviewees also highlighted most of these challenges, but they – both union and employer representatives - also gave examples of improved working conditions such as better management-employee relations, higher hourly wages and possibilities for wage increases, along with a change of industrial cleaners' position from peripheral - to core workers after their cleaning jobs had been outsourced to private companies. In addition, the interviewees stressed that many cleaning companies often terminate the contract of their employees when they renew or bid on new cleaning contracts as part of compulsory tendering – a process that reportedly takes place every

second or third year and is confirmed by other research (Mailand and Larsen, 2014; Mori, 2015; Udbudsrådet, 2012: 19). Therefore, many industrial cleaners face increased risks of job insecurity and other poor working conditions as a result of public tendering, even if they tend to stay in the same job, but typically on different terms and conditions, and with a different employer, if their current employer loses the bidding (Mailand and Larsen, 2014; Mori, 2015).

Recent Danish court rulings and media reports also reveal that precarious employment exists within industrial cleaning and in a number of cases this has been related to outsourced public cleaning (Refslund, 2014; Refslund and Thörnqvist, 2016). However, keeping cleaning tasks in house within the local government sector is no guarantee for a full-time permanent position and/or a job without the associated risks of a low paid job and poor working conditions. A recent study covering both public and private industrial cleaners suggest that heavy workloads and physically tiring jobs leading to work-related stress and poor health also can be found among industrial cleaners in the public sector (Jørgensen et al. 2016)**.** In addition, recent figures suggest that 24 per cent of the cleaning staff within the Danish local government sector hold a full-time permanent position with 37 or more weekly working hours and 16 per cent work less than 19 hours per week, indicating that part-time work is just as widespread among industrial cleaners in local government as in the private sector (KL, 2014a;b; Larsen and Mailand, 2014). In fact, 44 per cent of industrial cleaners work part-time and 16 per cent hold a contract of less than 15 hours per week. Moreover, 17 per cent of employees within industrial cleaning are self-employed without employees, whilst flexi-jobs and other public-funded employment schemes are found mainly within public cleaning (Larsen and Mailand, 2014: 49; Thomsen et al., 2013); FOA, 2012b;). Temporary agency work and fixed-term contracts are less frequently used throughout the sector, although some interviewees reported that the number of on-call temps – employees without any guaranteed working hours and for these reasons limited access to social benefits **-** has increased in recent years, and they have in some instances replaced permanent cleaning staff. Subcontractors – although a slightly different category of atypical work from the aforementioned – are also frequently used, although less so than just a few years back. They can be temporary work agencies, small or medium-sized companies or self-employed without employees that win bids during public tendering and/or are subcontractors for larger cleaning companies (Larsen and Mailand, 2014; Interviews, 2016).

To address the associated risks of precarious employment following outsourcing of public cleaning, Danish public authorities, including the municipality of Copenhagen increasingly, apply labour clauses in public procured and outsourced cleaning tasks.

Labour clauses and industrial cleaning – the Case of Copenhagen

Since the beginning of the new millennium, labour clauses have become more commonly used throughout the Danish public sector, including the local government sector, when cleaning contracts are up for public tendering. Prior to 2011, relatively few Danish municipalities used labour clauses in contracts on public procured cleaning services, but the situation has changed since then (Schulten et al, 2012; KL, 2015). In 2014, 65 per cent of Danish municipalities applied labour clauses when cleaning contracts were up for public tendering according to a recent study by 3F (2014). However, wide variations exist across the 98 Danish municipalities as to the frequency of using labour clauses as well as their content, scope and follow-up procedures when public cleaning is outsourced (KL, 2015; 3F, 2014; FOA, 2014). For example, 53 per cent of the Danish municipalities using labour clauses in public procurement often or always follow-up on

cleaning contractor's compliance with the labour clauses, and even fewer have included the right to economic sanction private contractors in case of non-compliance as well as use chain liability when cleaning tasks are outsourced (3F, 2014; KL, 2015). In this context, the municipality of Copenhagen is often highlighted as the good example by the interviewees.

The municipality of Copenhagen first started to systematically use labour clauses as part of public procurement throughout the municipality, including industrial cleaning in 2011 as mentioned earlier. However, there exist even earlier examples of public tenders with specific clauses related to industrial cleaners' wage and working conditions along with procedures on how to ensure subcontractor's compliance with such clauses (Wiegmann et al. 2001: 32-39). The labour clauses used by the municipality of Copenhagen in the area of industrial cleaning have been revised and strengthened in terms of their usage, content and follow-up procedures in recent years - a process where social partners to varying degrees have been consulted according to the interviewees. In 2014, the municipality decided to formalise the collaboration with social partners and set up a social dialogue forum with representatives from the unions and the employers' associations within industrial cleaning. Besides representatives from the municipality of Copenhagen, 3F – the largest union organising industrial cleaners - represents the voice of employees on the forum, whilst the employers' interests are represented by DI – the largest Danish employers' associations. Other unions that also organise industrial cleaners such as FOA, Serviceforbundet and KRIFA are similar to another employers' organisation – Danske Services – which represent the interests of small and medium-sized cleaning companies - not represented in the forum, indicating that the representativeness of the forum is somewhat restricted.

The social dialogue forum and social partners' approach

The main purpose of the social dialogue forum within industrial cleaning is to discuss ways to ensure reasonable wage and working conditions for employees providing cleaning services for the Municipality of Copenhagen, irrespectively of their nationality and employer (Økonomiforvaltningen, 2015). The agreement specifying the main purpose of the social dialogue forum also states that social partners may not necessary agree with the various initiatives proposed by the municipality in the forum, but stresses that the forum will be used to inform, consult and discuss these initiatives as well as to exchange ideas (Økonomiforvaltningen, 2015). Moreover, the collaboration agreement explicitly states that individual cases will not be discussed within the forum. Instead, the issues raised will be of a more general character such as wage and working conditions, the organisation of the independent inspectorate's work procedures, guidelines of information to subcontractors and issues related to migrant worker's housing conditions etc. In addition, the interpretation of new rules and regulations on social dumping following potentially new EU-regulation and/or central government initiatives can also be subject to discussion within the forum (Økonomiforvaltningen, 2015).

Social partners – both trade unions and employers associations – have welcomed the municipality's initiative on setting up a social dialogue forum on industrial cleaning, even if they to varying degrees seem to disagree with the concept and usage of labour clauses in public procurement. This is also reflected in the social dialogue meetings and the aforementioned collaboration agreement signed by the involved parties, as all involved parties described the form of dialogue taking place within the forum in positive terms. The employers within industrial cleaning have in particular been rather critical and generally speaking oppose the very idea of labour clauses and particular the usage of chain liability within the labour clauses. They also

question the legality of using labour clauses in public procurement due to EU's regulation on the free movement of services – an issue that also was raised during the initial meetings within the social dialogue forum, where the Municipality reportedly had external lawyers to assess the potential conflicts with EU regulation. The employers have also raised concerns as to how labour clauses potentially challenge the very foundations of the Danish industrial model. According to the interviewees, labour clauses indirectly intervene in social partners' rights to regulate wage and working conditions autonomously through collective agreements as they demand private contractors to follow certain wage levels outlined in the dominant collective agreements to win the contract – issues that traditionally have formed part of collective bargaining.

Also within the municipality of Copenhagen do we find similar scepticism regarding the usage of labour clauses in public procurement and their potential clash with the Danish industrial relations model. Some unions representing industrial cleaners are also critical towards the usage of the labour clauses, but often because many Danish municipalities – unlike the Municipality of Copenhagen - lack enforcement mechanisms to ensure private contractors' compliance with the labour clauses. In addition, other issues raised in the social dialogue forum on industrial cleaning have reportedly been the development of follow-up procedures, including the specific content of clauses in the contracts on public procured work, the level of control of private contractors and the time period for private contractors to deliver requested documentation by Bureau Veritas in case of non-compliance - issues which there to varying degrees have been disagreement about according to the interviewees.

The interviewees representing Danish cleaning companies and industrial cleaners also pointed to various practical challenges related to local authorities' usage of labour clauses in public procurement. For example, although not experienced in the area of industrial cleaning within the Municipality of Copenhagen, but elsewhere in the Danish public sector, the interviewees reported of a common mismatch between public authorities various demands to the private contractor. On the one hand some public authorities request private subcontractors to follow the wage and labour standards outlined in the dominant collective agreement within industrial cleaning, whilst on the other hand their public tenders tend to be underfunded as the budgets often only cover the potential labour costs and in some instances is even lower than the associated labour costs outlined in the collective agreements. The interviewees also gave examples from other Danish municipalities, where private contractors had won tenders, but followed other collective agreements than the dominant agreement within industrial cleaning, even if this conflicted with the content of the used labour clauses within that particular municipality. Therefore, examples exist of public authorities who in some instances indirectly accept wage and working conditions below the labour standards outlined in the most dominant or representative collective agreement within industrial cleaning.

Risk based Inspections and compliance

The labour clauses applied by the municipality of Copenhagen within the area of industrial cleaning follow the standard labour clauses used throughout the municipality when distinct services are up for public tendering and the control unit – Bureau Veritas - also carries out inspections among private contractors providing cleaning services for the municipality. Between October 2014 and October 2015, the inspectorate carried out 32 inspections among private contractors providing cleaning services for the Copenhagen municipality, and hardly any inspections revealed violations of the labour clauses leading to further investigation and infringement cases (Økonomiudvalget, 2016). In fact, the interviewees told that at their

last meeting in the social dialogue forum, the representative from the municipality informed of the last years inspections by Bureau Veritas. During this year, there had been no reports or examples of non-compliance within the areas of industrial cleaning. However, in the past within industrial cleaning and in other outsourced areas within the Copenhagen municipality, there have been examples of non-compliance. These cases have typically been solved through dialogue with the involved parties as mentioned earlier. However, in one instance, but prior to the involvement of Bureau Veritas, the municipality of Copenhagen decided to terminate a cleaning contract due to violations of the labour clauses according to the interviewees.

The inspections and follow-up procedures used by the municipality of Copenhagen within industrial cleaning are rather unique in a Danish context: Besides the municipality of Copenhagen hardly any Danish municipalities have outsourced the inspections of the labour clauses, but tend to keep such control mechanisms in house if they have such control mechanisms in place at all. Indeed, the lack of control mechanisms and enforcement of the labour clauses elsewhere in the Danish public sector was highlighted during the interviews with both employers and employee representatives and often had them question the general effectiveness of the labour clauses. Many saw the labour clauses primarily as a policy document of intent rather than an effective tool for regulating wage and working conditions due to the lack of enforcement and control mechanisms in a number of municipalities.

The effects of labour clauses

The interviewees within industrial cleaning were rather sceptical as to the effects of the labour clauses as a tool to ensure reasonable wage and working conditions and thereby limit precarious employment due to lack of follow-up procedures and systematic control of private cleaning contractors in most of the Danish municipalities – with the exception of Copenhagen and a few other municipalities. Indeed, , some interviewees also gave few examples of municipalities other than Copenhagen, where the issues of control and enforcement of the labour clauses were on the political agenda and had included inspections of, for instance, pay notes as part of the general inspections of the service quality in public procured work.

All interviewees also considered labour clauses mainly as a supplement to existing Danish labour market regulation of wage and working conditions, and many interviewees also saw labour clauses as a political tool used by public authorities to avoid negative publicity in the media. In this context, all interviewees stressed that the collective agreements, the labour law and the various internal certification schemes developed by Danish employers' associations were more effective tools than labour clauses to ensure compliance with Danish labour standards and thereby implicitly to address precarious employment. This was largely due to the various control and enforcement mechanisms in place, where violations can be brought before the labour court or the civil court, whilst violation of the employers associations' certifications scheme can lead to cleaning companies being expelled from the employers' associations, which has happened in the past (Larsen and Mailand, 2014). That the collective agreement covering industrial cleaning in the private sector also includes specific clauses on cleaning companies usage of subcontractors, where cleaning companies using subcontractors cannot offer lower levels of social protection and wages than the standards outlined in the collective agreements, have also been an important tool to limit precarious employment. However, even with the various control and enforcement mechanisms in place, industrial cleaning is one of the sectors on the Danish labour market, where precarious employment continue to be widespread with recent studies suggesting that 30 per cent of

cleaning companies are wage dumpers in that their hourly wage is between €13.3 and €14.7, and 3 per cent pay less than €13.3 euros per hour, whilst the minimum wage varies between €15.7 and €29.9 depending on the collective agreement under consideration (Danske service, 2014; Andersen and Felbo-Kolding, 2013a: 148, Refslund and Thörnqvist, 2016; Larsen and Mailand, 2014; Korsby, 2011). According to the interviewees, many industrial cleaners in precarious positions often fear losing their job, if raising their concerns about violations to the collective agreements, which makes it difficult for the unions to detect such violations and bring such cases before the labour courts. In addition, industrial cleaners – primarily migrant workers, have often limited knowledge of their labour rights which also - according to the interviewees - affect the impact of labour clauses and other Danish labour market regulation as tools to address the problems of precarious employment within industrial cleaning.

Some union representatives within the industrial cleaning sector also stated that labour clauses in some instances were used to lift the collective agreement coverage, particularly in the area of elder care. In other parts of the industrial cleaning sector, the examples of low wages and poor working conditions within outsourced public cleaning had often been used by the unions in particular to attract political attention to the problems of precarious employment within the sector.

All in all, the effects of labour clauses were considered limited by the interviewees, particularly in Danish municipalities without any control units and follow-up procedures to ensure compliance, even if most Danish municipalities use labour clauses when outsourcing cleaning tasks. However, in the case of Copenhagen, the interviewees were more positive to the effects of labour clauses due to the inspections and usage of economic sanctions in case of non-compliance. Nevertheless, labour clauses were considered primarily a supplement to the traditional Danish labour market regulation, and social partners stressed to varying degrees the potential challenges between labour clauses and the collective bargaining system, particular if labour clauses develop further in their content and start dictating specific wage levels and other working conditions which traditionally have been regulated through collective agreements.

Summary

Public procurement and outsourcing of public services to private contractors have become more widespread in recent years in Denmark. Alongside this development, Denmark has also witnessed examples within public procured work, where wage and working conditions were far below the labour standards outlined in the Danish collective agreements. This has triggered a political debate among public authorities and social partners at all levels regarding the usage of labour clauses in public procurement. Although labour clauses are only mandatory for governmental organisations, most Danish municipalities – 90 per cent - have also applied labour clauses in public procurement and outsourcing when considered appropriate (KL, 2015). In this context, the municipality of Copenhagen is often considered the good example and has not only systematically included labour clauses and chain liability in all public procured work throughout the municipality. The municipality has also formalised the collaboration with social partners through the set-up of social dialogue forums in the areas of construction, industrial cleaning and within housing as well as appointed an external and independent auditing firm to ensure private contractors' compliance with the labour clauses. So overall, the implementation of labour clauses in the municipality of Copenhagen is advanced in a Danish context.

Labour clauses are often considered a supplement to existing Danish labour market regulation and may help to reduce precarious employment in so far they are implemented and regularly inspected to ensure private subcontractor's compliance with the labour clauses. However, only few Danish local authorities have control mechanisms in place – the municipality of Copenhagen being one of the few exceptions. In this context, our case study suggests that most procured and outsourced work within the Copenhagen municipality follow the terms and conditions outlined in the collective agreements, since relatively few of the risk-based inspections conducted by the control unit – 7 per cent – have led to further investigation and infringement cases. The violations of the labour clauses typically entailed private subcontractors' failing to pay sufficient pension contributions or holiday entitlements, over-time payments and sick pay – issues that often were solved through dialogue with the involved parties and resulted in the private contractor paying the outstanding amounts to the employees. Only in few instances had the municipality of Copenhagen cancelled the contract with the private contractor as a result of non-compliance.

Our findings also suggest that labour clauses in some instances can serve as a benchmark for other companies in various sectors with spin-off effects on private employment, although our case study points to that this is mainly experienced within construction and less so industrial cleaning – the two sectors examined in the case study. In this context, social partners were to varying degrees concerned about the implications of labour clauses for the Danish collective bargaining model, where social partners regulate wage and working conditions through collective agreements. The interviewed social partners also pointed to various practical challenges regarding the mismatch between some municipalities' demands to the private contractors in terms of requesting compliance with labour clauses vis-a-vis their budgets in public tenders, which in some instances did not cover the associated labour costs, if labour standards were to be followed. The employers' associations are very critical towards using labour clauses in public procurement and oppose the very idea of chain liability for various reasons and have raised their concerns not only within the social dialogue forums set-up by the municipality of Copenhagen, but also within the broader political debates. Although Danish public authorities have driven the policy process on developing labour clauses in public procurement and Danish trade unions have lobbied for strengthening the implementation of labour clauses, we also find that parts of the Danish labour movement and some of the public authorities also are– for various reasons - sceptical towards applying labour clauses in public procurement and outsourcing.

All in all, labour clauses can be considered a useful supplement to existing Danish labour market regulation, which may help ensure private contractors compliance with Danish labour standards and thereby help to reduce precarious employment. In this context, the municipality of Copenhagen comes across as a good example, where not only social partners have been involved in the process, but the municipality has also implemented various follow-up procedures to ensure private contractors' compliance with the labour clauses. Such findings also suggest – in line with other empirical studies – that the labour market outcome in terms of segmentation and precarious working condition stemming from outsourcing and other types of public procurement are less severe in the Nordic countries (Hermann and Flecker, 2012; Jaehrling, 2015; Marino et al., 2017). The Danish implementation of labour clauses is also advanced in a comparative European perspective (Jaehrling, 2015: 13).

3. Case study 2 – Organising labour migrants to reduce precarity

Migrants often face an increased risk of contingent and precarious working conditions, both labour migrants and people migrating for other reasons than work. Migrants are often employed in less organised parts of the labour market, which in the Danish context also tend to be dominated by smaller firms (Refslund, 2016). Some migrants are employed in the informal economy (without the formal papers, taxation etc.), and some even face exploitive working conditions, where they are forced to work under contingent conditions and against their own will, which also happens in Denmark. Furthermore, migrants typically do not speak the native language, they have limited knowledge about their rights, and about the functioning of the local labour market as well as the society in broader terms. All this enhances their risk of facing precarious working conditions.

We know from previous research that how encompassing national labour market institutions are also highly affect migrants' working conditions (Bosch and Weinkopf, 2013; Menz, 2005; Penninx and Roosblad, 2000). In particular unions and their power resources play a key role (Refslund, 2016; Wagner and Refslund, 2016), and also the collective agreement coverage is vital to increase wages and working conditions for migrants workers as well as other workers in risk of precarious working conditions (Bosch, 2015; Bosch and Weinkopf, 2013). At the same time, we also know that migrant workers have a significantly lower unionisation rates than natives (Gorodzeisky and Richards, 2013) and that the unions in general face problems with organising labour migrants (Eldring et al., 2012; Lillie and Sippola, 2011). This has also been confirmed in some larger Danish surveys (Arnholtz and Andersen, 2016; Arnholtz and Hansen, 2013) as well as in Danish case studies (Refslund, 2014). Arnholtz and Hansen (2013) found that 12 % of Polish workers in Denmark were members of a Danish trade union and the figure is even lower for posted workers - 6-7 % for German and Polish posted workers (Arnholtz and Andersen, 2016). These figures are considerably lower than the general union density for the Danish labour market - around 65 %. Therefore, increasing the unionisation rate for migrant workers in Denmark is a vital challenge for the Danish unions, which would possibly ease unions' attempts to enhance the collective agreement coverage for migrant workers. Hence, Danish unions can through such initiatives help to reduce the share of migrant workers experiencing precarious employment.

This case study investigates two examples of Danish unions approach to organising labour migrants in two very different settings, namely in the fish processing industry and construction. The two case studies focus on the dynamics of organising as well as challenges identified by the unions by drawing on interviews with migrant workers, union workers, locally elected shop stewards as well as company representatives.

Migrants and precarity in Denmark

Denmark has experienced a marked influx of migrant workers from Central and Eastern Europe following the Eastern enlargement of the European Union, and the end of the transitional agreement on restrictions on free movement of workers from the new member states in 2009. The figure has risen from less than 10.000 in 2004 to more than 90.000 in 2014 (Refslund and Thörnquist, 2016). While there are also other

labour migrants as well as refugees in Denmark, the share of non-EU labour migrants are still highly restricted. We concentrate, thus, on the intra-European migration in both case studies, both since EU11-workers[19] are the by far largest and most relevant group in general, but also since the migrants involved in the two case studies were almost exclusively from Eastern and Central Europe.

While the interviews indicated that precarious working conditions are widespread and there have been numerous reports in the media on precarious working conditions among migrants on the Danish labour market, it is also important to emphasise that the majority of migrant workers experience decent wages and working conditions in Denmark. For instance, Arnholtz and Hansen's (2013) large study of Polish workers found that most had acceptable conditions, but wages were 31 % lower than the Danish average. A recent survey among Poles in Denmark found that the wage levels continue to be significantly lower (around 20 % for similar low-skilled work) and one out three Poles have at some point experienced that they were cheated by their employers' on e.g. wages or holiday remuneration[20]. Therefore, it appears that the problems with precarious working conditions found in these case studies here may be somewhat representative of broader tendencies for migrant workers to experience increased risks of precarious employment on the Danish labour market, and that the precarity of migrant workers in Denmark continue to be underexplored. As a Polish women working as translator for the construction union stated;

> *"It was a shock for me to see how many foreign workers were treated poorly – I found it really daunting to see how the employers take advantage of these migrant workers not knowing the language and their rights".*

Other groups of migrants do also play a role here, and often non-EU migrants face an even higher risk of precarious working conditions, since they often have neither work permit nor permit for residence, so they cannot work in formal employment, but are forced into informal employment e.g. in restaurants as dish washers. Further case studies need to look into these migrants in greater detail, although research among informal migrants is very difficult. Even researching European labour migrants can be difficult since they often experience various forms of contingent working conditions, and they often fear (and typically for a good reason) that they will be fired or sent back to their home country, if they are involved or even speaking with outsiders such as unions, authorities and researchers (see Arnholtz and Andersen, 2016 for similar experiences).

The boundaries between forced labour and very exploitive conditions tend also to be blurred. Although most migrant workers in Denmark may not be in a precarious situation, some of the interviewees listed examples of migrant workers having debt in their home country, whereby they could not return before they had earned enough to pay the debt, which put them in a very vulnerable labour market position vis-à-vis the employers, where they felt under such great pressure that they would accept very inferior wages and working conditions. In addition, many of the Romanian workers had been promised a minimum of working hours or a guaranteed pay before arriving in Denmark, and many had paid a substantial amount of money to a Romanian "middleman" or recruiter to arrange for them to have a well-paid job in North-Western Europe. Some migrant workers had even taken up loans in order to be able to pay the middleman (interview, female migrant worker, Northern Jutland). The precarious employment situation of many

[19] The Eastern and Central European countries are the eight countries joining the EU in 2004 (together with Malta and Cypress), Bulgaria and Romania in 2007 and Croatia in 2013. We use the term EU11 to describe these countries here.
[20] See http://www.ugebreveta4.dk/polakker-bliver-snydt-af-chefer-i-danmark_20190.aspx

migrant workers often lead to other problems for the migrants, including housing, limited possibility to travel to their home country, strained family relations and issues of social exclusion. Some employers include among others housing and transport in the "work package" offered to the migrant workers and then charges unreasonable fees for poor housing conditions (Interviews, migrant worker and union workers). For example, a union organiser reported that the migrant workers stay and live in the very same buildings as they are tearing down as demolition workers, which is illegal in Denmark.

Types of migrants – and the prospects for union recruitment

There is marked variation in labour market integration depending on the status of the migrants. Some migrant workers can be termed "transient migrants", as they move from country to country in order to find the best available job. Many of the Romanians working in the fish industry in Northern Denmark had previously worked in Spain within the hotels and restaurant sector. By sheer incident they had met a Danish employer, who happened to on holiday in Spain, and when he offered them potentially well-paid jobs in Denmark, they packed up their car with their belongings and drove to Denmark. This type of migrant workers often have no specific plans for the jobs, but only want to earn some money and then often return to their home country. Another group of migrant workers are commuting back and forth between the country of residence and the country where they work. In the construction sector, we conducted interviews in a demolition company, where almost all the workers were Romanians commuting back and forth, e.g. working four to six weeks in Denmark before returning to Romania. They mainly aim at earning enough money to e.g. buy a house in Romania. The final group consist of migrant workers that have settled down in the host country - with the intension of living in Denmark. They are learning the Danish language and have perhaps started a family in Denmark as well as bought a house. In the interviews, we also came across this group of migrant workers; some of them worked in the union or were actively involved in union work like e.g. shop stewards and working as translators for the unions.

The migrant workers' status based on these three categories (circular, commuting and settled, which can be found in various forms in many studies on labour migration) has a significant impact on the unions' ability to organise these workers. The categories are obviously ideal types, and the workers can shift back and forth and change status. Previous research shows that the longer the migrants stay within a particular country, the more likely they are to have a unionisation rate as natives (Krings, 2014). Transient workers in the first group are very difficult for the unions to organise (Greer et al., 2013), since they often only stay in a given country for a short period of time, do not speak the native language and are often reluctant to engage with unions, since the employers tell them not to engage with unions and public authorities. This was also expressed in the interviews and one union worker within construction stated;

> "*We don't really see any prospects in trying to organise this type of migrants, they have typically moved to another country before we even get a dialogue with them"* (interview, union worker construction).

The commuting workers are also hard to organise, but less so compared to the transient migrants whilst the settled migrants are easiest for the unions to organise in general. When the migrants have settled in a host country, they often experience that in order to ensure a decent living as in Denmark, they need to have wage level along the lines of their Danish colleagues and with time some migrant workers also seem

to get a better understanding of the Danish labour market and how Danish unions operate (interview, migrant Northern Jutland).

Many of the migrants come from a background where unions are perceived as either corrupt or as part of the regime or are the string puppet of management. Therefore developing trust-based relations between the migrant workers and the Danish unions are key to the unions' success with organising migrant workers - an often lengthy and time consuming process and has to be done on the migrant workers' premises (Interviews, union organiser construction and union translator with Polish background).

There are also some marked national differences among the migrant workers in Denmark, which may affect the unions' ability to organise them. The migrant communities from EU11 appear to be quite stratified among themselves. There seems – based on the interview data – to be little if any at all - contact between the different national groups of migrants, and work tasks and labour processes are often highly segmented, with e.g. the fish factory and the demolition company mainly employing Romanians, while building crews typically is made up of Polish crafts workers. There seems to be a hierarchal approach, where Romanians and Bulgarians and to some extent Lithuanians and Latvians take up the lower segment with the lowest paid jobs and the most strenuous working conditions, while especially the Poles and to some extent Hungarians often have better working conditions and higher wages. This also reflects how long the various groups have been working in the Danish labour market, where the Poles have been in the Danish labour market for the longest period (see also Refslund 2014).

Case Studies – organising in the fishing industry and construction

Danish unions have increased their effort to organise migrant workers, however there is still a long way to go, before the unionisation rates match the union density of Danish native workers. In the following, we will describe two examples of organisation effort in order to better understand some of the dynamics behind. There are examples of successful organisation as illustrated in the case study of the fish processing industry, but there are also less successful – but still on-going - processes as the construction case shows.

Case study: Organising in the fish processing industry in Northern Jutland

Most of the Danish fish processing industry is located in the Northern parts of Jutland, since it is close to fishing areas. Traditionally, it has been an industry with a high unionisation rate and a rather Tayloristic work organisation. Up until around 2009, there were hardly any migrants working in the factories, but this changed quite swiftly. A local employer started hiring Romanian workers as temporary agency workers, which he then would send to some of the fish factories. The fish processing industry is highly dependent on the supply of fish, so if there are no fish, there is no work. In the past, the workers within the fishing processing industry would often be "*send home",* when there were no fish and during these periods, they would be eligible for unemployment benefits, which are administered by the union through the Danish Ghent-system. The local stop steward in a fish factory refers to the workers; "*going on the union"* (interview, local shop steward, fish factory), which is a traditional Danish way of describing this situation, emphasising the key role of the union. This arrangement is regulated by the collective agreements, whereby the companies have the right to do so. However, some of the fish factories started then to employ labour migrants rather than relying on the aforementioned arrangement. This has caused some problems

with the union, since it in some instances has been unclear whether the migrant workers working as temps are covered by the local collective agreement.

The main organising effort regards a large fish processing factory. After one of the old fish processing factories went bankrupt some new owners took over the old factory and they started to mainly employ Romanian migrant workers. The union took contact to the company in order to get a collective agreement, but at first there were only very few workers on the site, so they did not pursue the company as such. Due to limited resources, the local union has to prioritise its resources and securing a collective agreement can be a lengthy process. However, the number of Romanian migrant workers grew fast, and without a collective agreement the wages were low compared to local Danish standards in the other fish factories. Since there are no statutory wages in Denmark the wage level in companies without a collective agreement can be set at any level. But in 2012, did the union experience a break-through in the effort to secure a collective agreement, after eight Romanian workers approached the local union (3F). This was very difficult for the migrant workers as they feared getting fired, but they felt that their conditions were so bad that they needed to take action. It was a lengthy process and required several meeting to build confident and trustful relation between the Romanian workers and the union (interviews, local union worker and Romanian migrant workers), so that the migrant workers felt sure that the union would represent their interest. The migrant workers did not have any previous positive experiences with unions from their home country or any other countries, they had worked in. The Danish union continued their dialogue with the company, but this was not very fruitful, wherefore the union launched a media campaign regarding working conditions for the Romanians. However, when two of the Romanians decided to speak to the press about their working conditions, the case really gained a strong momentum, with a lot of media attention. The media reported among others that the migrant workers had to pay a fee in order to get considered for a job in the factory, faced very long (illegal) working days as much as 22 hours, received no over-time payments and they risked being fired, if they were critical towards the working conditions within the company[21]. Following the media attention, the union also issued an industrial action notice to the company, but before the unions had initiated the actual industrial actions the company signed a collective agreement raising the wages and also ensuring payment for over-time work along the lines of the collective agreements covering the sector.

While the factory continues to mainly employ migrant workers, they are now covered by a collective agreement securing wage levels, over-time payment and holiday remuneration along the lines of the collective agreement. Afterwards most of the Romanians (around 70 %) have joined the local union, and they have also elected a local stop steward, who is Romanian, and has a close cooperation with the local union chairman and have received training from the union. The local shop steward said in the interview; "*We are very happy that the union helped us".* The shop steward is very successful in organising new workers in the factory. For example, 12 new employees attended an information meeting at the company, and after the meeting 11 employees joined the union. All in all, the attention and the signing of a collective agreement have eased the union's possibility to recruit new members among the migrant workers.

[21] See e.g. http://www.food-supply.dk/article/view/78332/hard_kritik_af_prisbelonnet_fiskerivirksomhed#

Case study: Organising in larger construction sites

The second case study reflect a more coordinated effort in the construction union cooperation (BAT), where the unions have hired all in all 15-20 organisers in various locations in order to improve their presence in the work sites in the sector – in particular the large construction sites. Their main purpose is to increase union recruitment among both migrant workers as well as native construction workers. The local union branches specify in their job description for their union organisers that workplace presence is a high priority. In the case study, we concentrate on a specific region in the Northern Jutland, but we also conducted interviews in the Copenhagen area. The Danish construction sector has also seen an increase of migrant workers from EU11, and they represent around 8 % of the workforce within construction in 2015 – a number that is comparatively lower than other sectors such as industrial cleaning and agriculture (Arnholtz and Andersen, 2016; DI, 2016; Refslund, 2014). However, construction was one of the sectors being affected relatively early by labour migration, and the sector has traditionally been dominated by a high union density and high collective agreement coverage, whereby increased inflow of migrants and the increasing issues related to precarious employment have attracted quite a lot of attention from the unions, public authorities and the employers' associations.

Some segments of the industry are highly segmented. For example, an interviewed company in demolition only employs Romanian workers, and according to a representative from the local municipal job centre it has been 15-20 years ago since he has seen a Danish demolition worker (information from an interview with a HR manager in a demolition company). Often large shares of the migrant workers are employed on the minimum wage rates in the collective agreement (if the company has a collective agreement), which interviewees representing the unions and the employers' associations strongly disagree as to whether this is the intention of the collective agreements or not. The interviewees representing the employers' associations argue that the migrant workers can be remunerated according to the minimums rates in the collective agreements, while the union representative stressed that these wage rates only relate to workers in construction being send home on pay due to lack of work or due to bad weather conditions (interviews national construction representatives unions' and employers' association representatives).

The union strategies on organising migrant workers

In general, the interviewed union organiser was rather content with the unions organising efforts. He had as an organiser successfully recruited around a 100 new union members of which nearly one in two were migrant workers within the last year he had been working on the organising project (interview, union organiser, construction). The unions also have a national network among the organisers employed within construction, where they share information and experiences. The organiser we interviewed was very inspired by the effort done in the Copenhagen Metro Team (the company constructing the new metro ring in Copenhagen), where they have been very successful in recruiting new members. However, this success was also based on incidents with very bad experiences and precarious working conditions in the early phases of the construction project.

Trust was often highlighted as key when recruiting migrant workers by both union representatives and by migrant workers. Since migrant workers often come from a very different back-ground, their perception of unions often differs significantly from the Danish setting. The migrant workers often perceive the unions as part of the political system or e.g. mistakes union representatives for labour inspectors from the Working

Environment Authorities (this was mentioned in several interviews by union workers, migrant workers and the HR-manager in a demolition firm). Therefore, the union representatives working with organising migrants emphasised that building a trust based relations between them and the migrant workers is in general the first step in helping and organising migrant workers. This also means that such organising efforts have to be done on the migrant workers' terms and conditions, e.g. the Polish construction workers preferred to meet in the evening rather than directly after work, so the union organiser had to adjust their meetings to meet such demands (interview, union organiser, construction). According to union representative there are not that many differences between organising native workers and migrant workers (besides the trust, where the Danes are easier to approach, but they still have to build a trustful relation over time with natives as well). All in all it is classic union organisation about being present, highlighting the strengths and contribution of the union and entering a dialogue with the workers (interview, union organiser, construction).

Most Danish construction workers often work separately from the EU11-workers, and they rarely speak to each other. One of the interviewed organisers emphasised numerous times during the interview that he found it very important to soften this divide in order for both groups to get a better understanding of each other (interview, union organiser, construction). The unions had often experienced that once the migrant workers have decided to join the union, they get fired (interview, union organiser, construction). It is illegal to fire union members just for being union members in Denmark, but the employers can often find various reasons that appear legitimate such as work load, qualification etc. Nonetheless the migrant workers often stay with the union even if they find another job afterwards (interview union organiser). However, other research indicates that other reasons as to why migrant workers rarely are union members is down to unawareness as they never have been in contact with the Danish unions (Arnholtz and Hansen, 2013).

Danish unions have become much more attentive towards their organising efforts in recent years, partly due to declining union densities. Indeed, in the past, many unions often had an understanding that the members were more or less automatically flowing in. This has changed significantly and especially 3F (that are organising many low-paid manual and low-skilled workers) as well as other unions in e.g. construction have become very aware of their organisational work, e.g. by employing a number of organisers with the goal of increasing workplace presence and dialogue with potential members including migrants. As regards their organising efforts in relation to migrant workers, the Danish unions within construction have employed several people with foreign back-ground – in particular from the EU11 countries, but the Danish union within construction also has a Portuguese employee, since there are many Portuguese construction workers on the Copenhagen metro. The main reason for employing organisers with different ethnic background is for the union to approach the migrant workers in their native tongue. The unions also have a phone-based translator service available, whereby the local union representatives can start a dialogue with migrant workers, although there is not a local translator.

Yet another example from the construction sector is in Copenhagen, where the construction workers' union has organised a Polish club, where migrants with a Polish background can meet and there are also presentations about various topics like taxes, social security and more social events. The migrant workers do not have to be union members to attend, but obviously the hope is that with time the migrants will join the unions. There are similar events taking place in other parts of the country, including Northern Jutland,

where we conducted the main part of the interviews. For example, the construction union had had an information meeting with Romanians regarding the Danish labour market model.

Summary - Lessons learned in organising migrant workers

During the last decade, Danish unions have adopted a more pro-active approach to migrant workers as their numbers and impact on the labour market have increased. However there continue to be some way to go before Danish unions have a well-functioning organising model for migrant workers. However, the interview data suggests that the successful approach often is in traditional union organisation work with strong presence of union workers at the workplace and building trust based relations with the migrant workers. By contrast to Danish workers, migrant workers are more interested in receiving help with other labour market related issues such as taxation, social security, but also information on occupational health and safety issues are important for the migrants, since this also is quite different in Denmark as compared to their home country. This suggests that a more community based unionism approach is relevant in order to improve the recruitment of migrant workers in Denmark. It is well-established in the unionisation literature that workplace presence is an important element in the unionisation processes (Ebbinghaus et al., 2011), and therefore can these examples with increased workplace attention – in particular towards the migrant workers - be seen as a successful strategy in order to increase the union density among migrant workers' in Denmark.

The case from the fish factory shows that by building trust based relations between the migrant workers and the local union; this may also improve the wage and working conditions of migrant workers from being precarious to follow Danish labour standards. Such a success story, where the migrant workers can see that the union makes a clear difference and helps to improve the migrant workers' wages and working conditions can also help change the migrant workers' (in this case mainly Romanians) perception of Danish unions. There has actually been a sharp increase in Romanians joining the unions since 2012, and even the Romanian ambassador in Denmark has publicly stated that Romanian migrant workers in Denmark should join the union. In 2015, around 24 % of all Romanians working in Denmark were member of 3F[22], and the overall number of workers includes posted and temporary Romanian workers, which are per se more difficult to organise, and does not include Romanians in other unions, so this figure must be said to be very high. The local Romanian shop steward in the fish processing factory is very pro-active in terms of recruiting new members and collaborating with the local union branch and this case can serve as a good example in other organising cases. In particular the very clear outcome can be helpful for the union.

Challenges

While the case studies showed several positive outcomes and experiences, some significant challenges can also be identified e.g. the unions limited resources to pursue a full-fledged organisational effort, access to the migrant workers and organisation of the transient and commuting migrants, which also are some of the most vulnerable workers.

The organisation project in construction targeted primarily large construction sites and the example from the fish processing industry also included a larger production sites. However, in the Danish IR-model where

[22] Own calculations based on figures from 3F and Danish National Labour Market Authority.

it is mainly up to the unions to locate companies without collective agreement, the small, shifting and remote work sites are the Achilles heel (Refslund, 2016) and these small sites are problematic for the unions. As expressed by an interviewee;

> "*if we should reach all small and medium sized companies, we should be like 30.000 employees in the unions"* (interview, union organiser, construction).

It is also debatable how well some of migrant workers in the fish factory actually understood the Danish IR-model and the role played by the union – also in the local wage dispute. Some migrant workers seem mainly to be union members partly because it had become the social custom, partly due to their confidence in the local shop steward with Romanian background (Interview migrant workers, fish factory, Northern Jutland). However some of these migrant workers had only recently arrived in Denmark and the social customs theory are as such not something new in labour organisation studies. While the fish factory now have a collective agreement securing the workers a basic wages (without pensions and holiday remuneration) of at least around 130 kr./hour (17,50 euro), there are differences in the local agreements signed at company level, whereby some of the other fish factories in the area pay a higher hourly wage. However, there are also two Danish workers in the factory with the lower wage, so while this may be an issue it does not resemble the segmented labour market that existed before the collective agreement was signed.

4. Case study 3 - Social partner responses to temporary agency work within manufacturing

Temporary agency work (TAW) is a fairly recent employment type in Denmark, but has become more widely used on the Danish labour market - not least within the manufacturing sector – since the early 1990s when law changes allowed private companies to provide TAW services (Larsen and Mailand, 2014; Kudsk-Iversen and Andersen, 2007). Alongside this development, social partners have to varying degrees responded to the challenges arising from TAW by developing a series of joint initiatives through collective agreements alongside union led and employer led responses. The manufacturing sector is no exception and one of the most recent initiatives to deal with TAW within manufacturing has been the set-up of a joint task force group, which formed part of the collective bargaining settlement by social partners at sectoral level in 2014. The initiative entails new possibilities for social partners at company level to seek assistance from social partners at central level to discuss the various options for increased flexibility within the collective agreements, including the usage of TAW (CO-industri and DI, 2014). More precisely, social partners at company level can only consult the joint task force, if both partners at local level agree. The joint task force comprises of representatives from the employers' associations and unions at sectoral level.

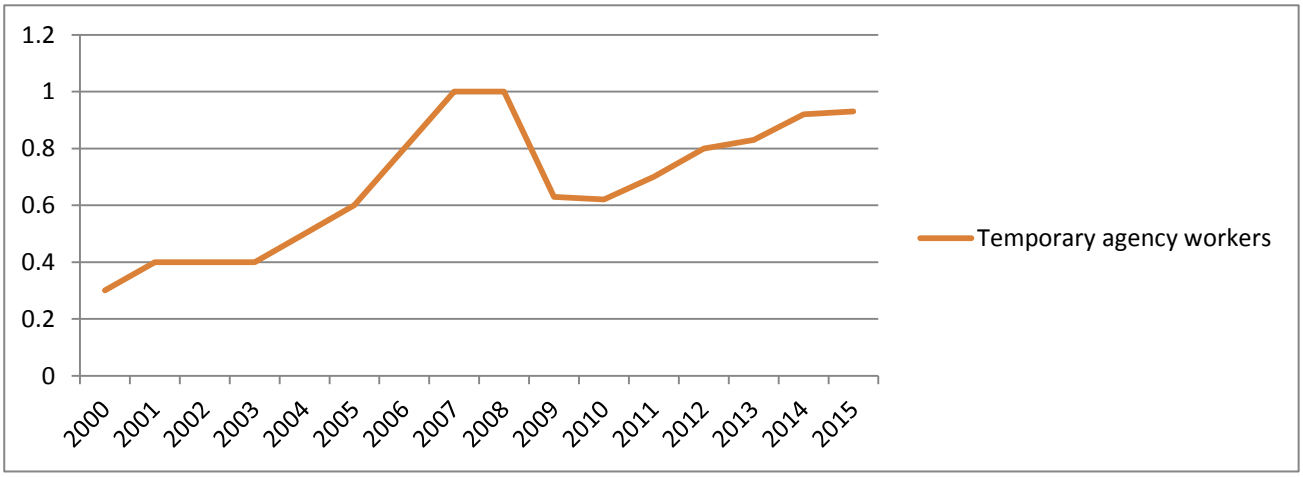
In this case study, we explore the implementation of social partners' joint initiative to set up a joint task force, where we particularly focus on the take-up rate at company level and the type of company based responses developed by social partners. The study draws on interviews with representatives from unions, user-companies and temporary work agencies (TWA's) at sectoral and company levels within the Danish manufacturing sector. The case study also includes four distinct settings i.e. companies, where we examine how user-companies, TWAs, unions and their representatives collaborate and develop joint responses to the challenges arising from TAW at company level, focusing on whether they have exploited the services offered by the joint task force set-up at sectoral level. The main reason why we mainly concentrate on the manufacturing sector in this case study is not only due to TAW being relatively widely used in the sector, particularly among blue collar work, but also because the collective agreement by DI (The Confederation of Danish Industries) and CO-industri (The Central Organisation of Industrial Employees in Denmark) - is in many ways the leading collective agreement for the overall Danish labour market and social partners in other sectors often adopt and incorporate the changes agreed upon on in their collective agreements.

The section is structured as follows: firstly we briefly present the recent development in TAW in Denmark along with the regulation of wage and working conditions of TAW. We then briefly examine social partners' approach and responses to TAW within the manufacturing sector, before we turn to the implementation of their recent joint task-force that offers guidance on how to deal with TAW and other forms of flexibility in the sectoral agreement at company level.

Recent development in Temporary Agency Work in Denmark[23]

The TAW sector represents a relatively small segment of the Danish economy and cuts across various sectors and occupations on the Danish labour market with TAW being more widely used within manufacturing followed by construction and the health and social care sector when comparing the number of TAW hours sold to private companies in 2014 (Larsen and Mailand, 2014; Statistics Denmark, 2016). As also mentioned in the first report, the Danish TAW sector has witnessed significant changes since 1990, where new legislation liberalized the sector, allowing private companies to provide TAW services. Prior to 1990, only public job centres could provide TAW as they had a legal monopoly on facilitating employment services (Kudsk-Iversen and Andersen, 2006). Following the law changes in 1990, the TAW sector grew rapidly up until 2008, where the sector was hit relatively hard by the recent economic crisis in 2009. Within just one year, the annual turnover in the TAW sector was reduced by 36 per cent, 13 per cent of private temporary work agencies (TWAs) went bankrupt and the numbers of temporary agency workers nearly halved (Larsen and Mailand, 2014; CIETT, 2014; DI, 2014a: 4-9; 2016). Since then, the TAW sector has slowly recovered, and the number of temporary agency workers is nearly at the same level as the pre-crisis years (Mailand and Larsen, 2014; Statistic Denmark, 2016).

Figure 1: Number of temporary agency workers as a percentage of the workforce aged 15–64 years in Denmark, 2000–2015



Source: Arbejderbevægelsens Erhvervsråd (2009); Statistics Denmark (2016) Danish Chamber of Commerce (2016)

It is particularly the manufacturing sector that has witnessed a rapid increase in TAW in recent years with examples of manufacturing companies where one in two employees are temporary agency workers (Statistics Denmark; 2016; 3F, 2014; Interviews, 2016). According to the interviewees, this development took off in 2010 and accelerated up until 2015, where the situation slightly changed in that some Danish manufacturing companies started for various reasons to rely on other forms of flexibility at the workplace. Some companies have reportedly changed their employment strategy, partly due to increased stability in the company's economic situation combined with prospects for new incoming orders. Also pressure from local unions, increased difficulties in recruiting and retaining qualified staff with specialised skills along with

[23] With permission from the authors, this section draws heavily on work by Larsen and Mailand (2014)

some companies experiencing that temporary agency workers tend to be less committed than permanent staff were emphasised by both sides of industry during the interviews when asked about the rationale behind some companies' changed employment practices. However, many Danish manufacturing companies also continue to rely on TAW rather than employ people in permanent positions. Their main reason is often the need to swiftly adjust the workforce according to changes in the production, particularly in companies highly sensitive to economic market changes (Interviews, 2016). The interviewees also stressed that TAW is widely used as a recruitment strategy by the manufacturing companies, as this allow them to test new employees before recruiting them for a permanent position. Also the ability to reduce the administrative costs associated with having to employ and then shortly after lay off large numbers of employees due to rapid changing business cycles were highlighted by the interviewees when asked about manufacturing companies' rationale for using TAW. In this context, several interviewees – both union and employer representatives - also stressed that TAW contribute to a certain level of stability at the workplace, particularly in companies highly sensitive to changes in the economic business cycle, as they act as buffer and allow management to adjust the workforce without having to lay-off permanent staff. Indeed, such findings indicates that temporary agency workers are increasingly considered an integrated part of many manufacturing companies' workforce – an employment practice that differs slightly from the past, where TAW often was used in acute situations when permanent staff fell ill and/or if new unexpected orders ticked in (Kudsk-Iversen and Andersen, 2006).

Collective agreement coverage, membership of employers' associations and unions

In Denmark, temporary agency workers are covered by a complex web of collective agreements signed at sectoral and company levels; and those without collective agreement coverage are covered by the labour law following the implementation of EU's directive on TAW in 2013. Therefore, in some sectors the temporary agency workers are covered by collective agreements signed by social partners representing the TWA and the temporary agency workers within a specific occupation, whilst they in other sectors are covered by the collective agreements of the user company. In yet other sectors, a different approach is used, where the temporary agency worker's wages and working hours follow the collective agreement of the user company, whilst other working conditions such as pensions and further training are regulated by the collective agreement of the TWA (Larsen and Mailand; 2014; Jørgensen, 2007). In the case of the manufacturing sector, temporary agency workers are covered by the collective agreements of the user company, including the various local agreements signed by management and shop stewards. Therefore, the collective agreement coverage for such employees is estimated to be higher within the manufacturing sector than in other parts of the private labour market with recent figures suggesting that 73 per cent of Danish manufacturing companies have a collective agreement (Larsen and Mailand, 2014; Larsen et al., 2010: 258). The Danish manufacturing sector is also characterised by a comparatively high union density – 78 per cent in 2010 -, a dense network of union representation at the workplace - 48 per cent in 2010 - and strong traditions of company based bargaining (Larsen et al. 2010; Ibsen et al, 2011, Ilsøe, 2012). No exact figures exist regarding union density among temporary agency workers and the number of TWAs being members of an employer associations. However, the union density of temporary agency workers is estimated to be comparatively lower than among other employee groups, whilst it is primarily large TWAs that are members of an employer associations (Ibsen et al., 2011; Andersen and Karkov, 2011, Mailand and Larsen, 2014; Scheur, 2011).

Wages and working conditions among TAW within manufacturing

Numerous international studies have documented that TAW is often associated with increased risks of low wages, high job/employment insecurity, , weak representation and limited access to social benefits, career advancement, further training schemes (Kalleberg, 2000; Heery, 2004; Scheur, 2011; Larsen and Mailand, 2014). Denmark is no exception, and although some Danish temporary agency workers are compensated for the lack of social benefits and job security through higher wages, not all are so fortunate and face to varying degrees such aforementioned risks (Scheur, 2011; Larsen and Mailand, 2014; Hansen and Hansen, 2009). Within the manufacturing sector we also find examples of Danish temporary agency workers experiencing high levels of job insecurity, restricted access to social benefits due to various eligibility criteria. even if the labour law and the collective agreements covering the manufacturing sector in principle ensure them similar rights as comparable employees in full-time permanent positions. It is particularly temporary agency workers with short-term contracts or few weekly hours that may experience a greater risk of precariousness as they are less likely to meet the various thresholds outlined in the collective agreements and the labour law (Mailand and Larsen, 2014). However, the interviewees also listed examples of temporary agency workers having accrued rights to social benefits such as over-time payments, extra holiday entitlements, occupational pensions, but they had for various reasons not received such benefits. The complex administration involved was often highlighted as one of main reasons by the interviewees.

The job and employment insecurity facing many temporary agency workers have been a cause for concern among social partners, unions in particular, according to the interviewees. The TAW sector is dominated by high staff turnover with 78 per cent of employees having joined the sector whilst 57 per cent left the TAW sector in 2015 (DI, 2016). High turnover also applies to the manufacturing sector with such employment contracts often ranging from one day to typically six months according to the interviewees. Most interviewees also mentioned examples of employees being temporary agency workers for as long as 4-9 years at the same company, where their contract had repeatedly been renewed – typically with a two weeks interval, indicating high levels of job and employment insecurity, which for some have had negative implications for their life outside the workplace. However, others – one in three – prefer working as temporary agency workers and had for these reasons been with the same TAW company for several years despite the greater risks of job insecurity according to a recent unpublished by a Danish TWA (JKS vikar, 2014).In addition, the union and employer representatives interviewees reported of temporary agency workers often feeling excluded from the workers collective at the user company and being less committed to their jobs due to the nature of their employment contract.

Although some temporary agency workers stay with the user company for a longer period, they are rarely involved in the local bargaining process that takes place at company level, even if the shop stewards are attentive to their specific situation and may have raised their concerns with management (Interviews, 2016). In fact, none of the companies interviewed reported of involving their temporary agency workers systematically within the local bargaining process, often because they were not considered part of the workplace. Temporary agency workers also tend to lack a voice within the TWA's, as hardly any TWAs have tradition for collective representation such as shop stewards, local bargaining units and collaboration committees. However, in some instances TWA's have engaged in fruitful dialogue with the local union branches to deal with the various challenges facing temporary agency workers. Likewise, the employer associations and unions representing temporary agency workers and TWA's at sectoral level have – similar

to social partner representatives of user-companies and their counterparts at sectoral level - engaged in different forms of social dialogue to develop joint responses to address the associated risks of being a temporary agency worker.

Social partners responses– the case of their joint task force[24]

Social partners approach to TAW, particularly among the trade unions, has shifted in recent years. Danish employer associations – both those representing TWA's and user-companies - have generally speaking embraced this form of flexible working and have to varying degrees been willing to discuss ways to address the challenges facing the TAW sector, including the wage and working conditions of temporary agency workers within manufacturing and elsewhere on the Danish labour market (DA, 2013; Mailand and Larsen, 2014). By contrast, Danish trade unions have faced and continue to face difficulties in addressing TAW. Nevertheless, the Danish unions' strategies seem generally speaking to have shifted from trying to reduce or even avoid TAW up until the mid-1990s to increasingly accept such an employment form. The Danish unions have also pushed for new rules and regulations to improve temporary agency workers' wage and working conditions (Mailand and Larsen, 2014; Andersen and Karkov, 2011). However, some Danish unions continue to be rather reluctant towards TAW, which is also reflected in the different recent collective bargaining rounds at sectoral and company levels. The manufacturing sector is no exception, and although social partners within manufacturing have developed a series of joint responses through collective agreements as well as union led or employer led initiatives to respond to the challenges facing the TAW sector, some unions continue to call for various measures to reduce TAW (Mailand and Larsen, 2014; Andersen and Ibsen, 2014).

Social partner's main initiatives include raising collective agreement coverage and union density of temporary agency workers, along with lowering the thresholds for accruing rights to social benefits, improving the social benefits, adding new social rights as well as develop new rules and regulations for TWAs to prevent social dumping and unfair competition. Furthermore, social partners have also implemented EU's directive on TAW through collective bargaining and in 2014 they decided to set-up a joint task force on the usage of TAW and other forms of flexibility within the sectoral agreement. The main changes on TAW took place during the sectoral collective bargaining rounds in 1995, 2000, 2007, 2010, 2012 and 2014 within the manufacturing sector (see table 1).

Table 1: Examples of sectoral social partners' joint responses on TAW within the Danish manufacturing sectors from 1995- 2014

Year	**Examples of joint initiatives by social partners representing, user companies, TWA's and trade unions at sectoral level**
1995	• First joint protocol on TAW added to existing collective agreements covering manual workers/hourly workers, but excluding white collar/salaried workers – and it stipulates: • Temporary agency workers are covered by the same collective agreement that applies to employees of the user company if the company is an affiliate of DI. • Temps covered by the agreement are also able to accrue rights to the social benefits such as sick pay and a notice period within the collective agreement if they, similar to the employees of the user company, meet the assessment criteria.

[24] With permission from the authors, this section draws heavily on work by Larsen and Mailand (2014) Andersen and Karkov (2011), and Kudsk-Iversen and Andersen (2006).

2000	• Revisions to the joint protocol by DI and CO-industri from 1995 • Increasing pension contribution rates for all employees • the lowering the threshold for pension contributions from nine to two months, which, according to the interviewee from CO-industri, was primarily to ensure that temps also would be covered by such schemes. • Extended the rights to full-paid sick leave from four to five weeks for all employees • Removal of the upper threshold for wage compensation during maternity and paternity leave, whereby full pay applies to all employees meeting the legal criteria
2004	• Increasing pension contribution rates for all employees • New rights to six weeks' full-paid parental leave for employees with 9 months employment record • New rights to full-paid time off if an employee's child is hospitalised or ill.
2007	• Clarifications of legal aspects and possibilities for legal actions regarding TAW • New clause to the protocol to enable temps to transfer accrued rights to social benefits from the TWA to the user company if employment record exceed six months • Clarifications of temps' ability to accrue social rights to all entitlements listed in the collective agreement if meeting the assessment criteria • Lowering the length of break between jobs before temps loose any accrued rights from nine to six monthsIncreasing occupational pension contribution rates for all employees • Extending paid parental from six to nine weeks
2010	• Increasing occupational pension contribution rates for all employees • Lowering the threshold for occupational pension contributions from nine to two months, primarily to ensure temps being covered by such schemes. • Extending full-paid parental leave from nine to 11 weeks
2011	• Set-up of employer led certification scheme for TWAs , which aims to ensure user companies and the employees of the TWAs that certified TWAs comply with legislation and the employers' obligations which the TWA has undertaken.
2012	• Lowering the threshold to accrue rights to full-paid sick leave from nine to six months for all employees
2013	• Expanding collective agreement coverage of TAW to Salaried employees working as temps • Implementing EU's directive on TAW into collective agreements
2014	• Set-up of joint taskforce to assist social partners at company level to exploit various options for increased flexibility within the collective agreements including the usage of TAW. • New rights granted to shop stewards to request local agreements of TWA to prevent social dumping • Extending the threshold for temps to transfer accrued rights from six to nine months. • Increasing occupational pension contribution rates for all employees • Lowering the threshold for access to further training from nine to six months • New rights to one week of further training and time off to seek guidance from unions, if dismissed and employees hold an employment record of six months • Extending full-paid parental leave from 11 to 13 weeks • Set-up of a further training course for TAW legal consultants on rules, collective agreements and legislation on TAW (Employer led -Danish chamber of Commerce)
2016	Employer led survey on wage and working conditions with the TAW sector (Danish Chamber of Commerce)

Source*:* Larsen and Mailand, 2014; DI and Co-industri (1995; 2000; 2004; 2007; 2010; 2012; 2014); Interviews, 2016.

One of the most recent examples of social partners' joint initiative to respond to the challenges related to TAW is the set-up of their joint task force, which allows social partners at company level to jointly contact the social partners at sectoral level to discuss the various forms of flexibility within the collective agreements, including the usage of TAW. The initiative formed part of the collective bargaining settlement in 2014 and was mainly established due to union members and shop stewards' call for action owing to the rising numbers of temporary agency workers and their fear that TAW increasingly would replace permanent positions in the manufacturing sector (Andersen and Ibsen, 2013; 2014; Mailand and Larsen, 2014). Following this discussion, representatives from DI and CO-industri agreed to grant social partners at

company level a new possibility for assistance from social partners at central level to discuss the various options for increased flexibility within the collective agreements. This included, for example, the use of TAW, variable working hours and the possibilities for local agreements to deviate from the sectoral agreement (CO-industri and DI, 2014).

The idea of the joint task force was highly inspired from other areas such as the joint committee on collaboration and technology (TEK-SAM), where DI and CO-industri collaborate to jointly assist social partners at company level and which have proven to be relatively successful in the past. Therefore, when implementing the taskforce in 2014 the social partners reportedly adopted relatively similar principles and procedures as they had used in their former joint arrangements.

Implementing social partners' Joint task force – take up rate and lessons learned

The implementation of social partners' joint task force can be divided into three phases: 1) the developing of common procedures and practices for the task force, 2) the take-up rate at company level and 3) the specific company based responses. In the following, we briefly examines each of these stages.

Developing common procedures and practices at sectoral level

The implementation of social partners joint task force have entailed the development of common procedures on how the organisations at sectoral level will react when social partners at company level agree to seek their assistance. The structure and procedures developed have been highly inspired by similar practices used in other areas as mentioned earlier. More specifically, the social partners at company level can only consult the joint task force, if both parties agree to contact the organisations at sectoral level. In the situations where the social partners at company level agree to contact the sectoral organisations for assistance, the shop steward will typically contact their local union branch, who then will take contact to the federal union and thereafter contact the union bargaining cartel – CO-industri - who thereafter will contact the employers association DI to schedule a joint meeting with the social partners at company level. On the employers side, the individual manufacturing company will contact their employer associations to arrange a joint meeting with representatives from the unions, employer associations and the social partners at company level.

At a particular company meeting, representatives from each of side of industry will be present. In the case of the trade unions, the different local shop stewards in the company will participate in the joint meeting together with representatives from all the unions that are part of the CO-industri bargaining cartel and have union members at the particular manufacturing company. On the employers side, representatives from DI will be part of the meeting together with representatives from local management. This structure entails the risk that the representatives from the sectoral organisations in some instances will outnumber the company representatives when different joint meetings take place at company level – a situation that have occurred in some of the company visits and had been a bit overwhelming for the local social partners according to some interviewees.

Besides the development of the aforementioned common procedures, the unions have also hosted a three day seminar and developed a booklet for federal union representatives regarding the aim of the task force and the various options of flexibility within the collective agreements, which social partners at company

level can draw on. They also offer various services and advice to their members and union representatives, which all is part of their traditional union work. On the employers side, DI has also set-up their own internal employer-led task force with specialists, which among others assist and advice their members on the various options of flexibility included in the collective agreements. DI's own internal task force provides a phone hotlines, reviews of local agreements, strategic advice and face-to-face meetings. Therefore, a variety of tools are available to social partners at company level, although a key question is whether they exploit them and find them useful.

Take-up rate and lessons learned

Relatively few manufacturing companies have used the opportunity to contact and seek the assistance of the joint task force. In fact, the interviewees reported of less than 20 examples, and they listed various reasons as to why the take-up rate had not been higher. Some employers and union representatives stressed that it was a relatively new arrangement that only recently had come into force. From their past experiences, the interviewees reported that it often takes time before such schemes are fully implemented and people at the shop floor are aware of them. The findings from the company case studies confirm this, since some of the interviewed shop stewards and local managers were unaware of the existence of the joint task force and had for those reasons not used the opportunity to invite representatives from the organisations at sectoral level to discuss the various options of flexibility within the collective agreement. Other local managers and shop stewards had not contacted the joint task force, since they felt no need to do so according to the interviewees. Some had also individually consulted their local union branch or employers organisations, particularly DI's employer led taskforce for information, and saw therefore no need to also consult the joint task force (Interviews with shop stewards, employers and local branch unions, 2016). In this context, some interviewees also reported that contacting the sectoral organisations for help was often considered the last resort when everything else failed and stressed that it tended to be associated with a feeling of failure on both sides of the bargaining table. Indeed, most social partners at company-level preferred to solve their issues themselves rather than involving outsiders such as the unions and employers associations. Therefore, the relatively low take-up rate by social partners at company level can also be considered a success as social partners often have been able to solve the issues at hand without having to involve outsiders such as the central organisations.

In the few examples ,where shop stewards and management had decided to contact the joint task force for assistance, their experiences had been mixed. The social partners had typically contacted the joint task force for inspiration and in some instances to solve a deadlock in the local bargaining process. The visit of the joint task force had in some instances paved the way for company based discussions on various forms of working time arrangements such as variable working time. Likewise, ideas of further training, arrangement of holiday entitlements etc., and how social partners could exploit such schemes at company level to ensure increased flexibility at the workplace had also proven useful tool according to some interviewees. However, the visit of the joint task force had often not solved the deadlock dominating the local bargaining process, but had in some instances served as inspiration on possible ways to move forward, although the shop steward and management seldom agreed on what route to take. Indeed, the interviewed shop stewards and managers across the sampled companies stated that the recent local bargaining process had been dominated by disagreements, various deadlocks, threats of industrial actions, termination of local agreements that had resulted in a lengthy bargaining process, irrespectively of whether

they had involved the joint task force or not. The disputes had often concerned potential wage increases, but also distinct forms of working time flexibility, including shift work and TAW had been controversial issues in most of the interviewed companies. In this context, it is important to stress that Danish employers can only exploit the full potential of the sectoral agreement, if the shop steward or union representative agree and are willing to sign a local agreement on for example variable working hours, shift work and deviations from the sectoral agreement (Ilsøe and Larsen, 2016). In case social partners are unable to reach an agreement, they are forced to follow the standards outlined in the sectoral agreement (Ilsøe, 2012)

Company based responses to TAW

Although only few Danish manufacturing companies have contacted the joint task force about TAW and other options for flexibility within the collective agreements, the issue of TAW has been widely discussed in the four interviewed companies. Social partners had also to varying degrees developed company based responses which involved not only shop stewards and the management of the user company, but also with the TWA's and the local branch unions. In the bargaining process with TWA's, it had typically been the local union branch which had represented temporary agency workers, although examples also exist where the shop stewards of the user-company have been involved in the bargaining process. Indeed, common for most of the company based initiatives are that they – similar to most social partners responses at sectoral level - have largely initiated by the unions and their representatives company level. The employers of the TWAs and/or the user-company have then to varying degrees been willing to engage in such negotiations and find joint solutions.

The company based responses entail examples of informal local agreements, which ensure that temporary agency workers are guaranteed a permanent position after three to six months employment at the user company. That both sides of industry agreed to such an arrangement is reportedly due to the employers wanting to minimise conflicts at the shop floor as well as ensuring the retention of skilled and motivated employees, whilst the unions often wanted to improve the wage and working conditions of their members (Interviews with management and shop stewards, 2016). In other companies, some shop stewards have also pushed for temporary agency workers being recruited for permanent positions when job openings occurred, but had found no need to negotiate or sign a specific local agreement on the topic, mainly due to the nature of the user-company's production, which reportedly was highly sensitive to changing economic cycles.

In yet other companies, shop stewards have agreed with management of the user-company and the TWAs to ensure that the work clothes of the temporary agency workers are of similar high standard as for the permanent staff to ensure the health and safety at the workplace. Examples also exist of TWA's and union representatives having signed local agreements that reduce or even in some instances annul the threshold for accruing rights to social benefits such as occupational pensions and extra holiday entitlements often to avoid red tape and improve wage and working conditions of temporary agency workers. Likewise, some TWAs and local unions have also signed local agreements on further training, giving temporary agency workers, who are between jobs, the possibility to upgrade their skills through further training and thereby implicitly improve their employability. Other TWAs had close collaborations with the local union branches and local job centres in order to recruit potential employees among the their pool of unemployed. Likewise, a number of user companies work closely with the TWAs in order to coordinate the user companies' needs for TAW for shorter or longer periods. In this context, TWAs also experience that the user-companies

increasingly demand that the TWAs are covered by a collective agreement, before they are offered a particular contract (interviews with TWA's, 2016). This is reportedly to prevent that temporary agency workers are employed on contracts with wage and working conditions below the standards outlined in the most dominant collective agreement within a particular sector (Interviews with TWA's, 2016).

Within the interviews, we also see examples of shop stewards that have been very particular on not to sign any specific local agreements on TAW, as they wanted to avoid the risk that temporary agency workers get stigmatized. In addition, and although slightly different to the aforementioned company based initiatives, examples also exist of companies having set up internal committees with representatives from TWAs, management of the user company and union representatives which meet regularly and discuss any challenges related to TAW. Indeed, this represents a rather novel form of social dialogue as most committee work within Danish companies typically only involves representatives from local management and the employees.

Summary – the effects of social partners' joint task force at company level

Temporary agency work is a relatively new employment form in Denmark, but has become more widespread on the Danish labour market in recent years, not least within the manufacturing sector. Social partners have responded both individually and jointly to the challenges arising from manufacturing companies' increased usage of TAW at sectoral and company levels. Most responses have been initiated by the trade unions and their representatives. The employers on the other hand – TWA's, user companies and their employers' associations – have to varying degrees been willing to engage in such forms of dialogue and develop joint initiatives to improve the wage and working conditions of temporary agency workers and thereby implicitly reduce the increased risks precariousness often associated with TAW. However, examples also exist of employer led initiatives such as the certifications schemes developed by employer associations representing the TWAs as well as some user companies having started to demand that the TWA's are covered by collective agreements before winning a particular contract.

One of the most recent examples of joint responses developed by social partners to address the challenges related to TAW within manufacturing, is the set-up of their joint task force in 2014. The task force aims to assist social partners at company level by allowing to discuss with central organisations the various options for flexibility within the collective agreements including the usage of TAW. The joint task force formed part of the collective bargaining settlement in 2014, and this case study has examined how this joint task force has been implemented within the manufacturing sector by focusing on the take-up rate and company based responses in Danish manufacturing companies.

The findings reveal that only few companies have exploited the services offered by the joint task force, indicating that the arrangement to some extent has failed. However, when examining the situation at company level, we find that some Danish manufacturing companies are unaware of the existence of the joint task force. Others have not consulted the joint task force as they prefer to find their own solutions and primarily consider the joint taskforce as a last resort to solve potential deadlocks at company level. Therefore, our findings suggest that the low take-up rate in itself can be considered a success story in that social partners at company level often choose try and solve their own challenges through the company based bargaining system without involving outsiders such as the central organisations. Hence, the low-take

rate at company level. In the few instances, where manufacturing companies have drawn on the services of the joint task force, the experiences have been mixed. In some instances, social partners at company level found it a bit overwhelming that the number of representatives from sectoral level had outnumbered the representatives from the company. However, the workplace meetings with the joint task force had reportedly in some instances paved the way for new ideas regarding working time flexibility and the usage of further training and employees' holiday entitlements as alternative ways to create flexibility at the workplace. The task force had thereby served as inspiration on possible ways to move forward in the local bargaining process.

The findings also indicates that although only few companies have relied on the services of the joint task force, TAW has been high on the bargaining agenda of social partners at company level and have resulted in various company based responses ranging from informal local agreements that offer temporary agency workers a permanent position after three to six months employment to lowering the thresholds of social benefits along with local agreements ensuring that temporary agency workers between jobs are able up-grade their skills through further training courses and that the work clothes of temporary agency workers follow health and safety regulations, etc. In addition, some TWA's also collaborate closely with the user-companies, local job centres, unions and their representatives to coordinate user-companies demands for TAW services vis a vis recruitment of potential temporary agency workers among the pool of unemployed registered with the local unions sand job centres. Moreover, examples exist of social partners having set-up committees, involving representatives from the TWA, the user-company and the unions to meet up regularly and deal with any issues related to TAW. Indeed, the latter form of social dialogue appears relatively novel in a Danish context.

All in all, the various sectoral and company based initiatives within the Danish manufacturing sector are examples of fruitful forms of social dialogue, where social partners – representing TWA's, user- companies, unions and temporary agency workers come together and find joint solutions to different challenges arising from TAW and the associated risks of precarious employment. However, even if social partners have launched a series of initiatives to ensure temporary agency workers wage and working conditions through the collective bargaining system at sectoral and company level, these employees continue to face a greater risks of precariousness than their peers in full-time permanent positions, particularly in terms of their wages, social benefits, job and employment security.

5. Discussion and Conclusion

This second part of the Danish national report has explored how Danish social partners through distinct forms of social dialogue have developed various initiatives to respond to the risks of precarious employment facing employees in different parts of the Danish labour market. The report consists of three case studies - each focusing on a distinct form of social dialogue, ranging from unilateral actions by Danish trade unions to bipartite collective bargaining at sectoral and company level, which is then followed by tripartite forms of social dialogue, involving public authorities, unions and employer associations. The specific case studies also concentrate on specific parts of the Danish labour market such as construction, industrial cleaning, fish processing industry and TAW within the manufacturing sector, which have witnessed challenges of precarious work, when measured in terms of wages, working hours, social benefits, job and employment insecurity, representation and collective agreement coverage. In the following, we discuss the main findings in terms of first outlining the main risks of precarious employment identified within the analysed sectors before moving on to sum up social partners' different responses developed through distinct forms of social dialogue including their variation across sectors.

Social partners' position and precarious employment - variations across sectors

Manufacturing, construction, industrial cleaning, the fish processing industry and the TAW sector represent sectors on the Danish labour market with wide variations as to the incidence of precarious employment, but also social partners' position and traditions of social dialogue within these sectors when measured in terms of prevalence of atypical work, union densities, workplace representation, collective agreement coverage and companies being members of employers organisations.

The Danish Manufacturing sector is often considered well-organized with relatively high densities on both sides of industry, strong workplace representation, high collective agreement coverage and long tradition for company based bargaining; and although TAW have become more widespread within manufacturing with examples of one in two employees in some companies being temporary agency workers and facing increased risks of precarious employment, other forms of atypical employment are comparatively lower than elsewhere on the Danish labour market (Mailand and Larsen, 2014; 2011). Also the construction sector and fishing industry stand out with being relatively well-organised, but parts of the fishing industry and construction sector such as demolition of buildings have witnessed a rapid increase in migrant workers, particularly from Central and Eastern Europe (CEE). Although the migrant workers from CEE are estimated to account for 8 per cent of the workforce within construction (Arnholtz and Andersen, 2016), research reveals that they, particularly posted workers, face increased risks of precarious employment, in terms of long work hours, low wages, weak representation within the unions, limited access to further training and social benefits etc. (Arnholtz and Andersen, 2016; Refslund, 2014; Hansen and Hansen, 2009; Felbo-kolding and Andersen, 2013).

The situation is somewhat different within industrial cleaning, and the TAW sector in general, where the union density and collective agreement coverage is estimated to be lower than the general average for the Danish labour market. These two sectors also tend to be dominated by an overrepresentation of migrant

workers, unskilled workers and atypical employment such TAW, part-time work, including marginal part-time work, fixed-term contracts, on-call-temps with no guaranteed working hours – groups of employees often experiencing greater risks of precariousness compared to the general average for the Danish labour market. Indeed, our findings suggest that there might be a close link between the prevalence of precarious employment and the strength of social partners in terms of collective agreement coverage and union densities and organization of employers. That our case studies indicated that the risks of precarious employment seemed greater within the non-organised labour market and areas of the labour market without control mechanisms in the form of external inspections (public procurement) or presence of unions and their representatives at the workplace (Construction, industrial cleaning) support the notion that the social partners' position is key in explaining incidences of precarious employment. Indeed, our case study within the fish processing industry indicated that the poor wage and working conditions experienced by the migrant worker changed to the better after the unions secured a collective agreement and a shop steward was elected at the workplace. All in all, our case studies point to that sector institutions may be just, if not more important, than national IR-settings, when exploring the incidence of precarious employment and contingent work as argued within much of the literature (Bechter et al, 2012; Eichhorst and Marx, 2015). Thus, it is an issue that calls for further exploration.

Forms of social dialogue, their effects and the lessons learned

In the report, we focused on three distinct forms of social dialogue – unilateral actions by unions, bipartite collective bargaining and tripartite consultations lead by public authorities and explored the implementation of such initiatives at company level, using case studies to illuminate their effects at company level.

Unilateral actions – Danish unions organizing migrant workers

Danish unions approach to organizing has been more pro-active in recent years and has among others targeted migrant workers within the fish processing industry and construction as shown in the case studies. The findings suggest in line with other unionization literature that the union's success often depends on their ability to build trust based relations with the migrant workers, prove they can make a difference to the migrant workers' wage and working conditions as well as strong union presence at the workplace, which often require some form of collaboration or social dialogue with the employers in terms of securing unions' access to the work sites and thereby access to the migrant workers (Ebbinghaus et al. 2011). Also if the company is without collective agreements, it entails that the union engage in some form of social dialogue with the employers in order to secure a collective agreement – a process that is not always a smooth ride, but can be lengthy, conflictual and include involvement of the wider community and the media as illustrated in our case study from the fish processing industry. However, building trust based relations with the migrant workers often seems to be the first step in this process, where it is paramount that the unions show how they successfully can make a difference in terms of improving migrant workers' wages and working conditions. Also our case study on usage of labour clauses within industrial cleaning indicated that gaining the trust of precarious workers was crucial in order for them to speak up about their poor wage and working conditions. Indeed, the case study on Danish unions organizing efforts among migrant workers within the fish processing industry is an example of a success story with rising union densities and indirectly improved wage and working conditions by securing a collective agreement

following the union's organizing attempts. The case study on union's organizing migrant workers within demolition is a somewhat mixed success. The unions have primarily targeted larger building sites, whilst often remote and small and medium size building sits have been overlooked, as they tend to difficult to assess for the unions, even if might be here that we find some of the most vulnerable workers within construction. This suggests that some groups of migrant workers are harder to organise than others and it may very well be the groups facing the highest risks of precariousness within construction.

Bipartite social dialogue – Dealing with TAW within manufacturing

Social partners within the Danish manufacturing sector have increasingly dealt with the challenges arising from the increased usage of TAW by developing joint responses through the collective bargaining system at sectoral and company levels. Their joint initiatives covers a series of responses that aim to improve the wage and working conditions of temporary agency workers and thereby implicitly reduce the risks of precarious employment. The initiatives have often been initiated by the trade unions and their representatives; and the employers –the user company, TWA's and/or their employers' associations - have then to varying degrees been willing to engage in such forms of social dialogue not only at sectoral level, but also at company level. In some instances, this form of collaboration has also spurred relatively novel ways of social dialogue at company level with examples of companies having set-up workplace committees with representatives from the unions, TWA's and the user company in order to address the various challenges related to TAW at the company.

Whilst social partners at sectoral level have developed various joint responses related to TAW, relatively little is known about their effects at company level. This case study explored the implementation of one of the most recent initiatives by social partners within the manufacturing sector; i.e. their joint task force aimed to assist social partners at company level with information on the various options for flexibility within the collective agreements, including the usage of TAW. The findings suggest that only few companies have exploited the services offered by the joint task force, indicating that the arrangement to some extent has failed. However, when digging a little deeper and exploring the situation at company level, the situation changes slightly. Unawareness partly account for the limited take-up rate, but the main reason as to why shop stewards and local management had not contacted the joint task force for assistance was often that they preferred to solve the issues at hand without involving outsiders such as social partners at sectoral level. Indeed, many considered the joint task force as a last resort to solve potential deadlocks at company level, indicating that the low take-up rate in itself can be considered a success story in that social partners at company level have been able to solve their own challenges through the company based bargaining system. In the few instances, where manufacturing companies have drawn on the services of the joint task force, the experiences have been mixed. In some instances, the task force has paved the way for new ideas regarding working time flexibility and how further training and employees' holiday entitlements can be seen as alternative ways to create flexibility at the workplace and thereby served as inspiration on possible ways to move forward, although the visits of the task force rarely had solved the various deadlocks dominating the local bargaining process.

Tripartite consultation

The case study on the usage of labour clauses on public procurement is an example of tripartite consultation lead by public authorities – in our case the municipality of Copenhagen, but involving social

partners in different stages of the policy process, where particularly unions have pushed for including labour clauses in public procured work. In addition, we focused on the implementation of labour clauses in public procured work within industrial cleaning and construction as particularly these two sectors have seen examples of precarious employment in public procured work.

When it comes to implementing labour clauses in public procurement, the municipality of Copenhagen is often considered the good example and has not only systematically included labour clauses and chain liability in all public procured work throughout the municipality even if such arrangements only are mandatory for central government organisations. The municipality has also formalised the collaboration with social partners through the set-up of social dialogue forums in the areas of construction, industrial cleaning and within housing as well as appointed an external and independent auditing firm to ensure private contractors' compliance with the labour clauses. Indeed, this formalisation of their tripartite consultation with social partners is - similar to the appointment of an external and independent auditing firm - rather novel in Danish context, even if most Danish municipalities – 90 per cent - use labour clauses in public procurement when it is considered appropriate.

The findings also indicate that the implementation of labour clauses have been relatively successful in terms of limiting precarious employment in public procured work within Copenhagen municipality. Relatively few of the risk-based inspections conducted by the independent auditing unit – 7 per cent – have led to further investigation and infringement cases. The violations of the labour clauses typically entailed private subcontractors' failing to pay sufficient pensions contributions or holiday entitlements, over-time payments and sick pay – issues that often were solved through dialogue with the involved parties and resulted in the private contractor paying the outstanding amounts to the employees. Only in few instances had the municipality of Copenhagen cancelled – or not renewed - the contract with the private contractor as a result of non-compliance. In this context, our case study points to that particular the appointment of the independent auditing unit has been favourable to ensure private contractor's compliance with the labour clauses.

Our findings also suggest that labour clauses in some instances can serve as a benchmark for other companies in various sectors with spin-off effects on private employment, although our case study points to that this is mainly experienced within construction and less so industrial cleaning. In this context, social partners were to varying degrees concerned about the implications of labour clauses for the Danish collective bargaining model, where social partners regulate wage and working conditions through collective agreements. The employers' associations in particular are very critical towards using labour clauses in public procurement and oppose the very idea of chain liability for various reasons and have raised their concerns not only within the social dialogue forums set-up by the municipality of Copenhagen, but also within the broader political debates.

All in all, our three case studies are all examples of fruitful forms of social dialogue, where social partners in different settings come together and often find joint solutions to deal with precarious employment even if they also encounter different challenges in the process and far from always agree on how to proceed. The case studies also gave examples of novel ways of social partners collaborating at central, sector and company, where also institutions from outside the workplace and the traditional bipartite collective bargaining system such as public authorities, auditing authorities and TWAs have been involved in the process.

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