

Reducing precarious Work in Europe through social dialogue

The case of Denmark (1st part of National Report)

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AALBORG UNIVERSITET

REDUCING PRECARIOUS WORK IN EUROPE THROUGH SOCIAL DIALOGUE

THE CASE OF DENMARK (1ST PART OF NATIONAL REPORT)

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Executive Summary

This report identifies and discusses challenges related to precarious work in Denmark. 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 % and coverage by collective agreements is even higher at 84 %. 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

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.

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 accept 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.

Chapter 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 the main points are summed up (Chapter 7).

Chapter 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.

2.1. 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 typically 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 they 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.), 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).

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)

2.2. 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.¹ Furthermore, if an employee has been continuously

¹ 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).

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 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.

2.3. 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 of time and one must have worked at least 52 weeks (1924 hours) within 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 one's 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).

2.4. 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.

Chapter 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 is the 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 %² 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.

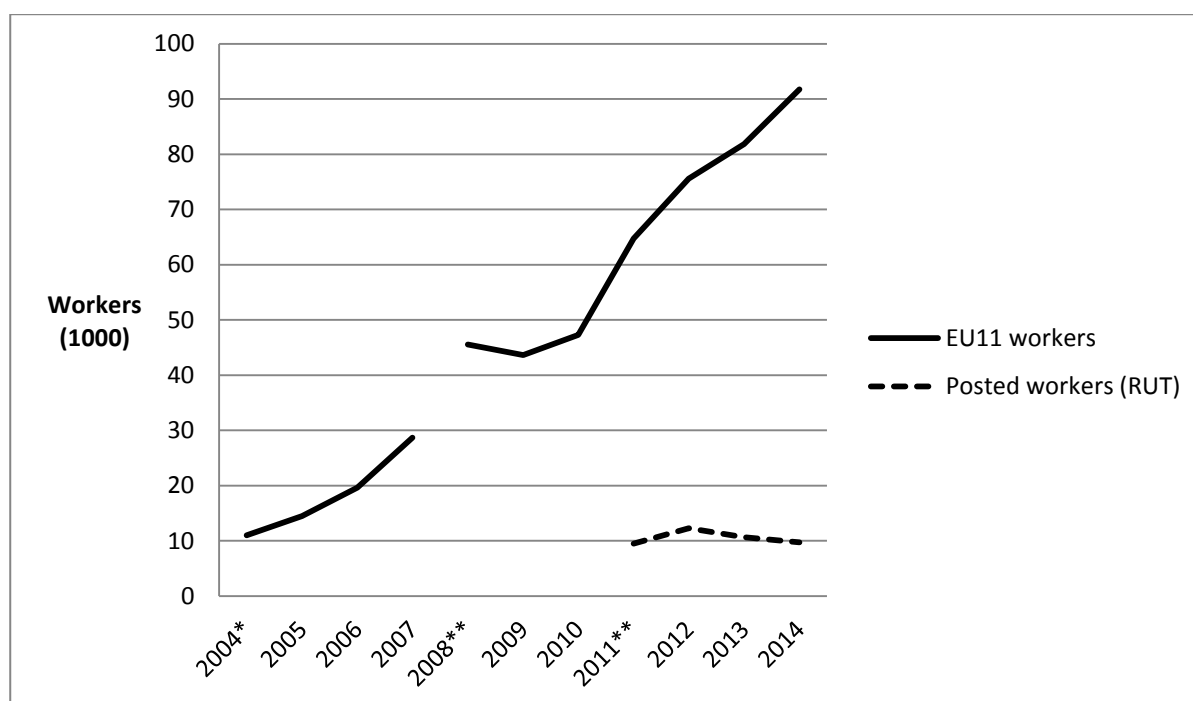
Research has also pointed to the fact that the use of foreign – especially Eastern European – labour is predominant in the less regulated industries such as agriculture, hotels and small restaurants as well as cleaning and the numbers have increased markedly in recent years (Refslund 2014). Figure 3.1 below shows the development since 2004. The number of Eastern European workers (EU11)³ in Denmark has increased

² 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.

³ 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.

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).

Figure 3.1: EU11 workers in Denmark 2004-2014



Sources: 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 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, and it stipulates how so-called reserves (a sort of 0-hour contract) can be used. 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 guaranteed. 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.

3.1. 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.⁴ 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 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.

⁴ <http://www.dst.dk/da/Statistik/bagtal/2005/2005-05-17-Selvstaendiges-sygefravaer>

3.2. 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.

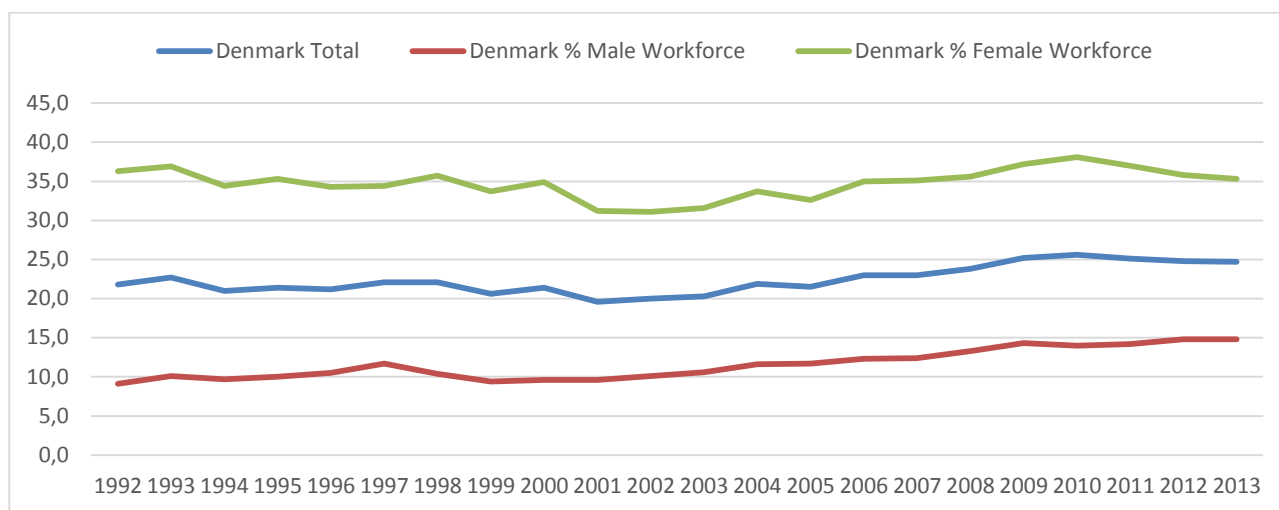
Chapter 4: Less than guaranteed full-time hours

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. *Zero-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.

4.1. 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, 1992-2013,⁵



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

⁵ 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.

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).

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
<i>Total</i>	<i>100</i>	<i>100</i>	<i>100</i>

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 led 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.

4.2. 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.

4.3. 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.

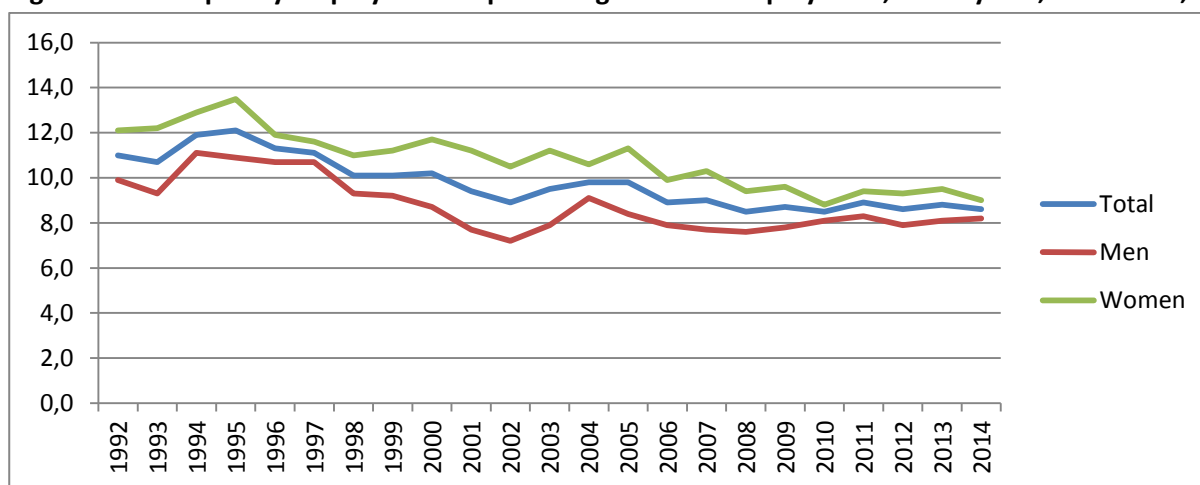
Chapter 5: Temporary work

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.

5.1. 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, 1992-2014,⁶



⁶ 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).

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.

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).⁷ 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 (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, their 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).

5.1.1. 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

⁷ 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).

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.⁸ 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.

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

⁸ <http://www.hk.dk/raadogstoette/emner/pension/stat/din-pension-som-ansat-i-staten>

a lesser extent for those who are a part of the workplace for a shorter period of time. A study in the municipal sector⁹ (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

⁹ Among 14 randomly chosen municipalities.

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).¹⁰ 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).¹¹ 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).

¹⁰ Based on ESS-data from 2008.

¹¹ 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).

5.2 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 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 with 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). Therefore 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 convert 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 it 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.

5.2.1. 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 depends 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.

5.3. 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.

Chapter 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.¹² 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.

¹² 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.

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 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.

6.1. 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 virksomhedsoverdragelse) 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).

6.1.1 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 2011¹³ remained around 10.000 with a peak in 2012 at 12.524 and down to 9.706 in 2014¹⁴ 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

¹³ This is when regulation on the RUT-register was tightened (the register is discussed below).

¹⁴ Own calculations based on public figures from The Danish Agency for Labour Market and Recruitment

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, 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).

6.2. 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 sectors¹⁵.

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

¹⁵Unless noticed the figures in this section is based on own calculations based on The Danish Agency for Labour Market and Recruitment public figures.

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.

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.

6.3 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 market (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.

6.4 Summary

Cost-driven outsourcing to some extent 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.

Chapter 7: Conclusion

On 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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