



Natalie Videbæk Munkholm

National report Denmark: Legal analysis part 1

Existing facilitators and obstacles in national regulation of social dialogue



Grant Agreement No	101177913
Project Acronym	Integrate Dialogue
Project Title	Integrating diversity in social dialogue: Strengthening the EU labour Market in the digital and green age
Deliverable title	National report Denmark: Legal analysis part 1
Deliverable number	
Deliverable version	
Contractual date of delivery	
Actual date of delivery	
Nature of delivery	
Dissemination level	
Work package	2
Task(s)	
Partner responsible	Syddansk Universitet
Author	Natalie Videbæk Munkholm
Version	

National report Denmark: Legal analysis part 1. Existing facilitators and obstacles in national regulation of social dialogue



Funded by the Horizon Europe Social Dialogue In The New World of Work. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or European Research Executive Agency (REA). Neither the European Union nor the granting authority can be held responsible for them.

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Preface by the project managers

The INDI project (Integrating Diversity in Social Dialogue: Strengthening the EU Labour Market in the Digital and Green Age), funded by Horizon Europe (101177913), examines how social dialogue can better include non-standard workers in a transforming labour market shaped by digital and green transitions. Focusing on the EU, the UK and Norway, the project explores existing and emerging models of worker voice and representation, with the aim of preventing rising inequality, in-work poverty, and social exclusion.

While social dialogue is a cornerstone of the EU's social market economy, non-standard workers often find themselves on the margins of such processes. This contributes to an increasing dualization of the labour market, with a clear divide between the better-off 'insiders' and the non-standard 'outsiders', who often find themselves in vulnerable positions. Both the scale and the consequences of such dualization vary significantly across countries, sectors, and business models.

The project adopts a comprehensive, multidisciplinary, and comparative approach encompassing eight countries, different business models, various forms of non-standard work, and social dialogue processes at various levels. We place the needs, interests, and motivations of non-standard workers for representation and voice at the centre (bottom-up perspective). These insights will be matched with strategies, willingness, and distributional costs among social partners when including workers in non-standard positions in social dialogue processes, as well as how these dynamics play out within different industrial relations and employment regimes (top-down approach). Our main research questions are:

- i. How can non-standard workers strengthen their power resources?
- ii. How are these processes influenced by prevailing industrial relations regimes, employment regimes, and business models?
- iii. How are these processes shaped by the interests of (different groups of) workers in non-standard positions?
- iv. How are these processes shaped by the interests of employers, investors, and contractors?
- v. How can power resources be translated into social dialogue with favourable outcomes for workers in non-standard positions?

Researchers from Belgium, Denmark, Ireland, Italy, the Netherlands, Norway, Slovakia, and the United Kingdom are participating. The project is coordinated by The Fafo Foundation in Oslo, Norway. The project was launched in February 2025 and will be completed at the end of January 2029.

We wish to thank the European Commission and the Horizon Europe programme for providing the opportunity to carry out this important and exciting research project.

Oslo, August 2026

Sissel C. Trygstad, Project Coordinator

Preface by the leader of Work Package 2

The legal work package (WP 2) of the INDI-project will present a legal analysis that aims to evaluate the impact of EU and national legal frameworks as barriers or facilitators for inclusion of non-standard workers in social dialogue, with a focus on reform recommendations. With a four-step analysis, this will contribute to the realization of the aim of the INDI-project of creating a more cohesive, effective, and legally robust environment for social dialogue, by addressing and proposing enhancements to the existing legal framework.

Part 1 is the first step and focuses on the existing legal framework at a national level, with an aim to identify and compare legal obstacles and facilitators for access to social dialogue for non-standard workers in selected national systems. The analytical framework for the analysis is presented in a separate working paper (deliverable 2.1). This has guided analysis of facilitators and obstacles in national law in Denmark, Italy, the Netherlands, Norway and the United Kingdom.

Part 1 will be concluded with a comparative analysis of existing facilitators and obstacles in national law (deliverable 2.3). Here, we will discuss commonalities and variations regarding access to social dialogue for non-standard workers with a focus on how this relates to differences in the national systems of social dialogue.

The next steps will be to examine the interplay between EU measures with potential to strengthen access to social dialogue for non-standard workers (Part 2, deliverable 2.4) and national law (Part 3, deliverable 2.5 and 2.6). Based on this, the aim is to develop recommendations for new strategies for including non-standard workers in social dialogue (Part 4, deliverable 2.7).

Oslo, August 2026

Marianne Jenum Hotvedt, WP Leader

1 Non-standard workers in Danish law

1.1 Introduction

In Denmark employment relations are governed primarily by collective bargained agreements, which are supplemented by employment legislation, i.e. the Danish Model. There is no general labour or employment statute, and there is no general statute regulating industrial relations. Collective bargained agreements are the primary regulatory tool in Denmark for stipulating binding pay and working conditions, as well as for providing the binding legal framework for industrial relations.¹

Industrial relations are self-regulating in Denmark. There is no general act regulating industrial relations. This legal framework is determined by the social partners themselves and developed by the caselaw of the industrial judiciaries. The Labour Court and industrial arbitration tribunals are special courts with executive competencies in the area of industrial relations, set out in the Act on a Labour Court and Industrial Arbitration.²

The degree of coverage for employees in Denmark is estimated at 82% nationwide and cross-industry. Coverage is 100% in the public sector but estimated at around 67% in the private sector. Unionisation rate is around 74%.

Legislators support the model of negotiation *inter alia* by passing only minimum-legislation in areas affecting the labour market. The government works closely with the social partners and tripartite consultations precedes any new legislation affecting the labour market,³ including transposition of EU Directives.⁴

Statutory legislation is traditionally passed only when avenues of negotiation have been exhausted in areas of social security, to transpose EU-law, or for groups of workers in need of special protection or traditionally not unionised.⁵

There is no general statutory legislation on what constitutes an employment relationship, on minimum wages,⁶ normal working hours,⁷ overtime payment, sick leave pay, maternity leave pay, or pensions. Likewise, there is no general statutory protection

¹ That is, the Danish or Nordic Model, e.g., O. Hasselbalch, *Labour law in Denmark*, 5th ed., Wolters Kluwer 2019, p. 23; N. Bruun, B. Flodgren, M. Halvorsen, H. Hydén & R. Nielsen, *The Nordic Labour Relations Model*, Ashgate 1992, p. 464. Further on the Danish model and its origins, see e.g., R. Fahlbeck, *Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features*, 2002, 43 Scandinavian Studies in Law 87–133, O. Hasselbalch, *The Roots – the History of Nordic Labour Law*, 2002, 3 Scandinavian Studies in Law 11–35.

² Statutory Act on the Labour Court and Industrial Arbitration Tribunals, no 1003 of 24 August 2017.

³ Dialogue is current and continuous, e.g. most recently on youth and work, and published at the Ministry of Employment website <https://bm.dk/arbejdsmraader/politiske-aftaler/trepartsaftaler> (accessed July 2026)

⁴ J. Kristiansen, The growing conflict between European uniformity and national flexibility: the case of danish flexicurity and European harmonisation of working condition, DJØF 2015.

⁵ Ibid; O. Hasselbalch, *Labour law in Denmark*, 5th ed., Wolters Kluwer 2019; N. V. & Schjøler, C. H. (2018), *Platform Work and the Danish Model - Legal Perspectives*, Nordic Journal of Commercial Law NJCL 1/2018, p. 117.

⁶ A few exceptions for special groups: vocational trainees, crown servants (*tjenestemænd*), subsidised jobs with a social purpose, cf. Hasselbalch 2019 (n 1) 135; and drivers in road transportation, cf. Amendment Act to the Act on Transportation of Goods, the Act on Bus Transportation and the Act on Posting of Workers, no 159 of 31 January 2022.

⁷ Hasselbalch 2019 (n 1) 120.

against unfair dismissal,⁸ and no general statutory right to upskilling and lifelong education. These fundamental rights and protections are negotiated primarily in collective bargained agreements.

Legislation is passed in the areas of social security, health and safety and non-discrimination. A few acts provide material rights for select groups of workers, i.e. the Salaried Employees Act,⁹ the Seafarer's Act,¹⁰ the Agricultural Assistants' Act,¹¹ and the Apprentices Act.¹²

The employment legislation is thus fragmented. As a result, there is no crosscutting definition of what constitutes an employment relationship, or who has the status and rights as an employee. This is determined on a case by case basis in relation to the specific statute. The same is the case for access to collective bargaining, where there is no statutory legislation determining who is an employee and can participate in bargaining or who has rights derived from collectively bargained agreements. This is determined in industrial caselaw on a case by case assessment when the question arises. This will be further illuminated below.

Information and consultation rights are found in both employment legislation and in collective bargained agreement.

All collective bargaining agreements include binding measures promoting shop level information and consultation of employees or employee representatives. Access to participate is determined by the social partners.

The Act on Information and Consultation¹³ transposes the EU Directive on Information and Consultation¹⁴ and is semi-dispositive. The Information and Consultation Act applies to employers, that are not already bound by a collective agreement on information and consultation duties that as a minimum correspond to the obligations in the EU Directive on Information and Consultation. This will be further illustrated below.

1.2 Legal norms on employment status

Legislation as well as collective labour relations are built on the binary divide: A contract can be either a contract of employment or a contract of commercial services. If the contract is an employment contract, the persons is an employee and has access to rights in employment legislation and in collective bargaining agreements. Persons offering their services as genuine solo-self-employed contractors do not have access to the

⁸ Kristiansen (n 4) 31; N. V. Munkholm, *Dismissal protection in Denmark* in B.Waas. (ed), *Restatement of Labour Law in Europe. Vol III Dismissal Protection*. C H Beck Verlag 2023. . Provisions with formal and substantive criteria for lawful dismissals exist but are fragmented. E.g. Statutory Acts applicable to all employees prohibit dismissal on specific grounds, and Statutory Acts for certain groups of employees provide notice-periods and a standard of reasonableness in cases of dismissal.

⁹ Statutory Act on the Legal Relationship between Employers and Salaried Employees, no 1002 of 24 August 2017 with later changes.

¹⁰ Statutory Act on the Working Conditions, etc. of Seafarers, no 335 of 9 April 2024.

¹¹ Statutory Act on Certain Working Conditions in Agriculture, etc., no 712 of 20 August 2002 with later changes.

¹² Statutory Act on Vocational Educations, no 381 of 13 March 2026 with later changes.

¹³ Statutory Act on Information and Consultation of Employees, no 303 of 2 May 2005.

¹⁴ Directive 2002/14/EC of the European Parliament and the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, pp. 29-34.

rights in employment legislation and in collective bargained agreements. There is no intermediary category for solo-self-employed persons offering services in a genuinely independent contract, not in legislation or in collective bargained agreements.

The question is instead to determine, whether the person offering services is an employee or is a genuine independent contractor.

1.2.1 The employment relationship

An undertaking is at liberty to decide whether work is to be performed by its own employees or by independent service providers. If work is performed by genuinely independent third-party contractors, the undertaking is free to negotiate the terms of service for the services performed and is not obliged to follow the terms in a collective agreement.

On the other hand, if work is performed by employees, and the employer is bound by a collective bargained agreement, the collective bargained agreement must be followed. As a rule, collective agreements are area-agreements and apply to all employees who perform work within the occupational scope of the agreement regardless of e.g. unionisation status. Unless the agreement explicitly provides otherwise, its provisions therefore apply fully to any person performing work and employed by the undertaking.

There is no cross-cutting binding legislation determining what an employment relationship is and as such, the concept is heterogenous. Each legal source defines its own scope of application.

The term employee (*lønmodtager*) is used interchangeably with the term worker (*arbejdstager*), there is no legal difference between the two concepts. Both can be found in legislation with a narrower personal scope, as well as in legislation with a wider personal scope.

The most used definition for an employee in employment legislation is 'a person receiving remuneration for personal work performed in a relationship of service'.¹⁵ This definition is found across a number of Danish employment acts, and more so in statutory acts transposing EU directives. Often, no specific additional criteria for the assessment are provided in the statutory acts or in collective agreements.

Caselaw from both the ordinary courts interpreting employment legislation, and from the industrial courts interpreting collective bargained agreements, has over time developed a list of set criteria, that are used more or less stringently in cases determining status of a person performing work.

The criteria developed in caselaw align with the general definitions in the legislative acts. The criteria are inspired by the criteria used in taxation law for determining status in relation to payment of taxes, but without the definition in taxation law being binding within labour and employment law.

¹⁵ J Kristiansen, The concept of employee: the Position in Denmark, in Waas, B. and van Voss, G. H. (eds), *Restatement of Labour Law in Europe*, vol I, Hart Publishing 2017; N V. Munkholm, C H Schjøler, C Jacqueson, *Lønmodtager- og arbejdstagerbegrebet i dansk arbejds- og ansættelsesret*, Beskæftigelsesministeriet 2022.

The three overall criteria used by the courts are

1. the degree of right of instruction and control vs the degree of autonomy,
2. the financial arrangement, and
3. any duty to perform the work personally.

In earlier caselaw the courts would take into account also

4. the degree of connectedness between the parties (short-term or permanent, low part-time or close to full-time, primary or supplementing income), and
5. the social perception (logos, general perception).

Criteria 4) and 5) are less prevalent in recent caselaw. The Ministry of Employment has recently, in relation to transposition of the EU on Transparent and Predictable Working Conditions,¹⁶ described the state of law concerning status as an employee or as a self-employed contractor:¹⁷

A person's status as an employee under Danish employment law depends on an overall assessment. An employee is typically characterised as a person who, by virtue of an employment agreement, is obliged to personally perform work (provide a service) according to the employer's instructions, at the employer's expense and economic risk, under the employer's supervision and in the employer's name, and who is entitled to remuneration for the work (the service) paid by the employer generally a salary, which is usually determined in relation to the time spent (hourly wage, biweekly wage, or monthly salary).

In other words, there must be a relationship of subordination or a position of service. However, it is not necessarily required that the employer's right to issue instructions exists in a traditional sense. It is generally recognised that the employer's right to direct work can consist of establishing the framework for how the work is to be performed, after which the employee carries out the work, possibly with ongoing reporting to the employer about how the task is being solved. Factors that indicate employee status include that the person does not share in the company's risk, profit, or capital, that the employer covers all costs for materials, tools, etc., and that a fixed working time has been agreed within a specific reference period.

By contrast, it is irrelevant whether the employment relationship lasts only a few hours or whether it corresponds both in terms of weekly working hours and total duration to what is usually characterised as a permanent fulltime position (a standard employment relationship). The size of the agreed remuneration, and the form in which it is provided, is likewise irrelevant. What matters is that the remuneration is paid in return for work or a service performed by the employee. Similarly, titles have no significance for the assessment of whether a person is considered an employee.

¹⁶ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, pp. 105-121.

¹⁷ Proposal for the Act on an Employment Certificate and Certain Working Conditions, proposal 84 of 2022.

In relation to transposition of the EU Directive on Transparent and Predictable Working Conditions, the Minister describes how to assess status as employee under the amended Act on Employment Certificate:

It may be noted that the Danish Holiday Act uses a formulation concerning employee status that is very similar to the one proposed here, and as stated in the preparatory works to the Holiday Act, it is the EU-law concept of a worker that must be applied in that context. In line with what is stated in the preparatory works to the Holiday Act, it is therefore considered possible to take the case law of the Court of Justice of the European Union into account when applying a definitional provision such as the one proposed here.

Further guidance on how the proposed definition of "employee" should be applied can be found in Recital (8) of the Directive. It follows from this recital that the criteria used by the Court of Justice of the European Union when determining worker status should be taken into account, and that to the extent domestic workers, unbased workers, platform workers, trainees, and apprentices meet those criteria, they may fall within the scope of the Directive. It also states that genuinely self-employed persons should not be covered, as they do not meet the criteria, whereas a "bogus self-employed person," where the designation as self-employed is being misused, will meet the criteria and should fall within the scope of the Directive. Thus, it is the actual circumstances surrounding the real performance of the work that must be given weight when assessing whether an employment relationship exists, and not the formal description of the relationship.

As such, the character of the relationship as one of subordination/of service is central to establishing employee-employer status, and in this, the level of instruction, control, and sanctions from one contract party to another is most central. The Ministry recommends ways for the courts to engage with the overall assessment of what constitutes 'instruction' in light of new developments.

1.2.2 Legal mechanisms to solve questions about status

The assessment of status as employee or independent contractor in relation to rights in employment legislation is made on a case-by-case basis by the ordinary courts.

The assessment is always made in connection with a claim for a material right in employment legislation, such as a right to notice periods according to the Salaried Employees' Act or a right to holiday pay in the Holiday Act.¹⁸

The assessment of status as an employee in relation to collective agreements or in industrial relations is made on a case-by-case basis by the industrial judiciaries. The assessment may be made in relation to breach of agreement for not applying pay and working conditions to all employees. The Labour Court may issue heavy sanctions for e.g. breach of agreement by not paying employees the pay and working conditions set out in the relevant collective agreement. Also, breach of agreement can be by

¹⁸ Statutory Act on Holiday, no 60 of 30 January 2018 with later changes.

circumvention of the collective bargained agreements by contracting with 'false' self-employed persons, who are in reality performing work in a subordinate relationship and therefore must be treated as employees.

There is no administrative body providing assessments concerning the status of a person under employment law or in industrial relations neither before nor during an employment contract.

Administrative bodies may determine the status of a person in relation social security rights, tax law status, and in relation to workers' compensation. The administrative supervisory the Danish Work Environment Authority (*arbejdstilsynet*) determines who has duties as an 'employer' under the Work Environment Act¹⁹ on the health and safety²⁰ of persons perform work for an employer. Those administrative assessments do not bind the assessments of the ordinary courts in relation to the status under employment law or the industrial courts in relation to collective agreements.

An administrative body, the Danish Competition Authority, determines status as undertaking or employee in relation to competition law.²¹ Such decisions do have a significant impact on industrial relations as it is an external factor defining the room for (lawful) collective bargaining for pay and working conditions.²²

1.2.3 The method of qualification of status

It is a general principle of law in employment law, that rights and duties in employment legislation including the scope of application cannot be derogated by individual agreement. This is explicitly stated in most employment legislations, e.g. the Salaried Employees Act section 21.

Likewise, collective bargained agreements are binding on the parties to the contract (the confederations, associations, individual employer) as well as to their members (the individual members of trade unions, the individual members of employer associations), and as such, collective bargained agreements and their scope of application cannot be derogated by individual agreement.

Because of the binding effect of collective agreements, an undertaking is not at liberty to categorise a contractual relationship for provision of work as one between two businesses with the effect that the contract is outside the scope of the collective agreement. The assessment of whether a contract for provision of work is a contract between two business and outside the scope of the collective agreement or is a contract in an employment-like relationship within the scope of a collective agreement, is made on the factual merits of the relationship and lies with the industrial judiciaries. Courts, ordinary as well as industrial, do place some weight on the formalities, and thus still

¹⁹ Statutory Act on Work Environment, no 442 of 24 April 2026.

²⁰ The Work Environment Act concerns only the health and safety of employees, not general pay and working conditions, and the Work Environment Authority controls only the health and safety measures of the employer, not the adherence to pay and working conditions.

²¹ Statutory Act on Competition, no 1150 of 3 November 2024.

²² E.g. Ruling of 26 august 2020 of the Danish Competition Authority on the platform company Hilfr.dk offering cleaning services in private homes, <https://kfst.dk/afgoerelser-ruling/konkurrenceomraadet/afgoerelser/2020/20200826-minimumspriser-paa-hilfrs-platform>.

place weight on the classification in the contract and the existence of a business registration number.

This is illustrated in a Labour Court ruling from 2008,²³ resulting in a penalty of DKK 100.000 for not adhering to the pay- and working conditions in a collective agreement in force at the entity. The Labour Court found that a subcontracting arrangement placed the employees of the subcontractor under the organisational framework and instruction of the contracting company. The employees of the subcontractor were in relation to the collective agreement considered employees of the contracting company, and the contracting company was obliged to adhere to the pay and working conditions towards the subcontractors' employees. Not paying the subcontractors employees pay and working conditions of the collective agreement in force was a breach of agreement of the contracting company. The ruling did not change the contractual relationship, but ensured that the collective agreement of the contracting company was adhered to towards anyone considered part of the organisational framework and under the instruction of the contracting company.

The legal assessment of whether an individual person or a group of persons are entitled to rights in employment legislation or rights in collectively bargained agreements are based on the circumstances of the relationship between the parties. The criteria used in taxation law are regularly referred to as a starting point. This is illustrated in the industrial arbitration ruling FV 2023-55, where the umpire refers at length to the criteria and the assessment methods found in the 1994 Guide²⁴ from the Ministry of Taxation:

When assessing whether a person is engaged in independent business activity, the following factors may be taken into account:

- a) whether the income recipient organises, manages, allocates, and supervises the work without any instructions from the client other than those that may follow from the order given,
- b) whether the client's obligation towards the income recipient is limited to the specific contractual assignment,
- c) whether the income recipient is not restricted by the assignment from simultaneously performing work for others,
- d) whether the income recipient is financially liable to the client for the performance of the work or otherwise assumes an independent economic risk,
- e) whether the income recipient employs staff and is free to choose assistants,
- f) whether the remuneration is paid on the basis of an invoice, and full payment is only made once the work has been performed as agreed and any defects remedied,
- g) whether the income is earned from an indeterminate group of clients,
- h) whether the income depends on any profit,

²³ Labour Court ruling in the combined cases AR 2008476 and AR 2008698.

²⁴ Outlined in Circular no 129 of 4 July 1994 on the Statutory Act on Personal Income, section 3.1.1.. The Supreme Court in ruling U 1996.1027 H confirmed, that the guideline defines the decisive criteria for status in tax law.

- i) whether the income recipient owns the tools, machines, equipment, or similar used for the work,
- j) whether the income recipient wholly or partly supplies the materials used in performing the work,
- k) whether the income recipient has established themselves in their own premises – e.g. shop, workshop, office, clinic, studio – and carries out the work wholly or partly from there,
- l) whether the exercise of the activity requires a specific authorisation, licence, etc., and the income recipient holds such permission,
- m) whether the income recipient, through advertising, signage or similar, indicates that he/she is professionally competent and undertakes to perform work of a specific nature,
- n) whether the income recipient is registered for VAT under the Danish VAT Act and the service is invoiced with VAT added,
- o) whether liability for any accident occurring during performance of the work rests with the income recipient.

The guideline is inspiration and not, however, in itself decisive in labour and employment law. The inspiration from the list of criteria in tax law has in industrial relations caselaw been supplemented by a special burden of proof rule for status as employee.

In industrial caselaw when a service provider has a contract for service, has a registered business in the Danish Business-registry (CVR), is registered to pay VAT, invoices the work including VAT and declares income to be taxed as self-employed, these formal elements establish a strong legal presumption, that the relationship is in reality one between two independent businesses. To show that the arrangement is in fact 'false' the trade union arguing for status as employee must meet a heavy burden of proof.²⁵ This approach is used also for determining the status of solo-self-employed subcontractors providing services.

In FV 2020.0516 the umpire confirmed the interpretative approach of the Labour Court in AR 2014.0596, stating that when certain formalities are in place it creates a presumption of status as solo-self-employed, which the trade union must counteract with a heavy burden of proof:

The fact that a company is covered by a collective agreement means that the company must comply with the agreement when it has employees performing work covered by the agreement. However, the company is free to have such work carried out instead by another independent business. If work is assigned to non-employees who are not genuinely self-employed, this may constitute circumvention of the collective agreement.

However, when a flooring company such as [...], which is CVR registered for tax purposes, enters into an agreement for flooring work with another flooring company that is also CVR registered, invoices with VAT, and declares itself to be self-employed for tax purposes, the labour law starting point is that the

²⁵ Labour Court ruling AR 2014.0596.

arrangement constitutes a contract between two independent businesses. The party who wishes to challenge this presumption bears the burden of proof. A high standard of proof is normally required to lift the burden of proof when the person performing the work has organised themselves as self-employed by obtaining CVR registration, issuing invoices with VAT, and declaring themselves as self-employed for tax purposes. [...]

The specific assessment and evaluation of evidence will be influenced by whether there are special circumstances suggesting that the arrangement between the two businesses is intended to circumvent the collective agreement—or whether such circumstances are absent

In FV 2020.0516, the trade union failed to meet the burden of proof, and the service providers were not considered as 'false' self-employed. The collective bargained agreement was not applied to the service providers.

In a later ruling, FV 2023-55, the umpire modified the heavy burden of proof rule for solo-self-employed established in 2020. In the 2023-ruling the umpire determined, that the heavy burden of proof rule applies only for self-employed service providers established in Denmark:

The umpire notes that the labour law presumption mentioned above concerns Danish solo self-employed contractors that are CVR-registered, and declare their income as self-employed for tax purposes. The differences between such a Danish solo self-employed and a Polish solo self-employed which may be entered in a Polish business register but is not subject to VAT liability are so significant that the Polish solo self-employed cannot, with the same degree of certainty, be assumed to be carrying out independent business activity in Denmark. Whether this is the case must therefore be determined concretely, applying the ordinary Danish rules of evidence.

The umpire then assessed the relationship between the Polish service provider and the Danish principal based on the factual circumstances, and the trade union was not met with a 'heavy' burden of proof based on an assumption of status based on the contract and public registrations. In the specific case, the Polish self-employed contractors were in a labour law perspective determined to have status as employees in the Danish company.

This approach is more aligned with the current state of law also in employment legislation. Still, there are not yet any more specific rules of presumption for workers with unclear status.

Denmark has not yet had employment law rulings or industrial law rulings concerning the status of platform workers. Wolt, a food delivery service, has in three administrative decisions been found to have status as employer: By the Danish Work Environment Authority according to the Danish Work Environment Act and by the Workers' Compensation Board under the Workers' Compensation Act.²⁶ In an administrative tax law ruling

²⁶ Statutory Act on Workers' Compensation Insurance, no 1279 of 4 November 2025.

initiated by a Wolt courier Wolt was found to be the employer for tax-purposes.²⁷ Wolt couriers are since then engaged as employees for tax-purposes, and are not required to have a CVR-number.²⁸ These administrative rulings do not in themselves determine the status of Wolt partners in relation to employment law or in relation to collective bargaining.

1.2.4 Rebuttable presumptions

Under Danish employment legislation there is no general presumption rule for status as employee. Likewise, the general rule on burden of proof is that a claimant must prove their claim for a certain status.

A development is taking place in legislation following the work on the latest transpositions of EU Directives.

The preparatory works for the Act on an Employment Certificate and Certain Working Conditions in 2022 prescribe,²⁹ that the formal description should not be taken into consideration. The purpose is to direct the assessment away from the formalities such as the contract and a company-registration as self-employed (which is fully digital, immediate, and with no material test). There is no new caselaw testing whether this method is applied in practice by administrative bodies or courts.

The same was discussed earlier in the preparatory works of the Holiday Act in 2018.³⁰ The new Holiday Act of 2018 was a result of changes in the EU acquis concerning the EU Working Time Directive.³¹ The social partners and the minister aimed to ensure, that the scope of the Danish Holiday Act aligns with the scope of the how the scope of the EU Directive on Working Time.³² The minister in the preparatory works explains how to ascertain the correct status under the Holiday Act for persons with an unclear status and – perhaps – introduces what can be read as a presumption rule:

There is agreement within the committee to take as a starting point the current Holiday Act's concept of an employee.

[...]

The committee has discussed the extent to which the Holiday Act covers persons in so-called 'atypical employment relationships,' such as freelancers, consultants, fee-paid workers, temporary workers, and fixed-term employees. In this context, the committee is aware that this does not constitute a new group,

²⁷ The Wolt courier was a journalist at the Radar Media: <https://radar.dk/artikel/wolt-sag-her-er-den-samlede-vurdering-fra-skattestyrelsen>.

²⁸ As recounted in the media, e.g. Zetland press, <https://www.zetland.dk/historie/s5pES0UC-a8yvV4M2-c61e5>

²⁹ Proposal for Act on Employment Certificate and Certain Working Conditions, proposal 84 of 2022.

³⁰ Proposal for Statutory Act on Holidays, proposal no 116 of 2017.

Statutory Act on Holidays no. 60 of 30 January 2018 with later changes.

³¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18/11/2003, p 9-19.

³² The report of the Holiday Commission with representatives of the social partners, Report 1568 of 2017, is available at <https://bm.dk/media/6102/ferielovsudvalgets-betaenkning.pdf>

but rather a group that is evolving. Moreover, the committee recognises that this group is not homogeneous and cannot be characterised unequivocally.

The committee therefore maintains that, for both self-employed persons (and thus not employees) and for freelancers, external consultants and fee-paid workers, it will be a concrete assessment whether an employment relationship exists that confers employee status under the Holiday Act. It best corresponds with the protective purpose of the Act, that employee status should only be lost where there is a basis for establishing genuine independence in the performance of work for another. The decisive factor is whether the person is genuinely self-employed.

The legislators foresaw the unclear situations, where the terms of work are uncharacteristic to standard employee status as well as uncharacteristic to status as genuinely self-employed. And the ministry suggested that such persons are entitled under the Holiday Act, unless the facts of the case (a basis) establishes that the person is in reality genuinely self-employed. This approach could be read as expressing a presumption of employment status for those in very unclear contract situations. The presumption can then be rebutted by proof for status as genuine self-employment. This instruction to the Courts on how to assess employee status in a modern and dynamic society, where the starting point is an express presumption for worker status even if the contract is with an independent contractor, is none the less perhaps a shift in the approach.

The new Holiday Act came into force on 1 September 2020. There is no caselaw yet on this new method for determining status as employee under the Holiday Act (July 2026).

The Platform Directive has not yet been transposed into Danish law, and a draft has not yet been submitted for public consultation (July 2026). The Ministry in 2021-22 organised an expert group to produce a report on the topic. The report discusses the current caselaw for determining status as employee in employment law and industrial relations law, and gives a recommendation on how to proceed with a rule of presumption for platform workers as well as other workers in non-standard work situations. The report is part of the foundation for the current discussions between social partners and the ministry on how to transpose the platform work directive, including how to formulate a presumption rule, including the threshold for activating the presumption and the requirements for rebutting the presumption.

Likewise, in industrial relations there is no presumption rule for status as employee.

The social partners have approached the risk of circumvention and speculation with other means. The terminology used is that of prohibition of circumvention of agreements, which is a well-established principle in Danish industrial relations.

For clarity and to counteract speculation, a principle prohibiting less favourable treatment of, for example, foreign workers or temporary agency workers is expressly stated in many agreements. Such statements counteract attempts to circumvent the agreement by contracting with workers on atypical terms.

Attention has also focused on the well-known risk of circumvention by “false” contracts with “independent service providers”, who in reality perform work on employee-like working conditions. This can as mentioned above be a case by case review by the Labour Court or an industrial arbitration tribunal.

In addition, some collective agreements in more high-risk areas for circumvention include specific mechanisms designed to prevent circumvention in sham subcontracting arrangements.

The building-sector agreements (e.g., Bricklayers’ Agreement § 80) warn against subcontracting to supposedly independent sole traders who, in reality, work under employee-like conditions. Guidance focuses on whether the “self-employed” person:

- is subject to the company’s managerial authority,
- bears economic risk,
- is responsible for the work’s quality.

The Hairdressers’ Collective Agreement (§ 32) bans leasing workstations because it frequently creates false self-employment. Contracts must be submitted for approval to the organisations.

The Industrial Agreement (IO 2020, Annex 17) states that all work carried out under the member company’s managerial authority is covered by the agreement, including temporary agency workers. Only a genuine subcontractor with its own managerial authority falls outside.

These mechanisms aim to prevent employers from externalising labour in ways that undermine collectively agreed standards. The agreements raise this as a specific attention point for employers and gives a point of departure for the interpretation of the industrial courts. The assessment method is nonetheless not guided by rules of presumption.

1.3 Three categories of non-standard workers

This project operates with three categories of non-standard work: Employees in a clear employment relationship but on non-standard working terms, persons in a contractual relationship involving labour but with an unclear or ambiguous status, and persons who are providing services as genuinely solo-self-employed contractors.

1.3.1 Category 1: Employment contracts on non-standard terms

What makes an employment contract ‘standard’ is not defined in employment legislation. Neither working hours nor working terms are generally defined in legislation. The social partners are the source to defining ‘normal’ working hours and working terms.

In collective agreements, the ‘standard’ employment contract between an employer and an employee is open-ended, full-time i.e. 37 hours per week (or similar monthly, quarterly or annual hours). The work is most often performed physically at the employers’ premises, i.e., working from home is quite common but is not the norm.

Category 1 in Denmark thus encompasses all employment contracts that are fixed-term, less than full-time, not concluded directly between the employer and the employee (multiparty contracts), and perhaps – but less prevalent – also contracts, where the work is always performed at a distance.

Atypical working terms are perceived as those on part-time contracts (approx. 24%, of this 10% are marginal part-time contracts of less than 15 hours per week (i.e., 2,4% of total labour market)) fixed-term contracts (approx. 10%), agency workers (approx. 0,6%) and solo self-employed (approx. 5%).³³

A lot of other forms of atypical working contracts exist. It is not prohibited to conclude work contracts on atypical terms, and there is no general duty to conclude contracts as full-time open-ended contracts.

Certain pay- and working conditions depend on a minimum connection to the employer. The Salaried Employees' Act applies only when work of the relevant character is performed 8 hours per week on average.³⁴ The Act applies to both fixed-term³⁵ and part-time work (averaging minimum 8 hours per week). This means, that minimal part-time workers working less than 8 hours per week are not covered. In the amended Act on an Employment Certificate and certain working conditions, transposing EU Directive 2019/1152, the Act covers contracts with at least 3 hours of work per week on average as well as contracts with uncertain working hours (on-call, 0-hour, etc.). This threshold for minimal part-time work follows the EU Directive on predictable working conditions. It has not yet had a spill-over effect on the threshold for other legislative acts in Denmark.

Concerning zero-hour contracts, there is no available data on their prevalence in Denmark. Zero-hour contracts would be assessed on their own terms and the status as workers is not affected. Zero-hour-contracts have been used in Denmark for a long time as 'on-call-temps' (*tilkaldevikarer*), reserves or replacements, and on terms, that are agreed to by the social partners. Agreements may ensure, that this group of employees do receive equal treatment, to ensure they are treated well and to counteract circumvention.³⁶ No general legislation targets this type of on-call contracts made directly between a company and the on-call-workers. The Act on Part-time Work would apply and thus a principle of equal treatment, as the work is performed on less than full-time contracts. Mandatory substantial rights in statutory acts or in collective agreements would apply with a view to counteract abuse and circumvention.

Fragmented contracts, i.e. contracts limited to one specific task at one specific time, of which platform workers is one subcategory, are not specifically regulated. There is also no available data on the number of persons working on fragmented contracts in general.

³³ Mailand, M: Faos Rapport 202: atypisk ansatte i den offentlige sektor, 2024, p. 9

³⁴ Salaried Employees Act section 2(2).

³⁵ Salaried Employees Act section 2(4).

³⁶ M Mailand and T P Larsen, *Hybrid Work – Social Protection of Atypical Employment in Denmark*, Study No 11, March 2018, Hans-Böckler-Stiftung, p. 34.

1.3.2 Category 2: Unclear status

Under Danish employment law or industrial relations law there is no category for persons with a status in between employee or self-employed. Employment legislation as well as industrial relations are binary.

A person or trade union may doubt, that a contract as self-employed service provider should in reality be seen as a contract of employment, e.g. because the person is under the instruction and control of the business partner, or performs work on the same terms as the employees of the business partner. Disputes concerning status in relation to employment legislation or in relation to collective agreements is determined on a case-by-case basis by the judiciary. The status of the contract will be assessed in light of the relevant employment legislation and/or collective bargained agreements.

There is no general mechanism for the assessment, this depends on the legal source in question.

The assessment and status as employee are heterogenous, meaning that concluding that a person has rights as an employee, or that a company has duties as an employer, does not automatically have the effect, that the person or the company changes their status in relation to other statutory acts or collective agreements. A person may have status and entitlements as a worker under some statutory acts, and have status and entitlements as a self-employed service provider under other statutory acts.

Genuinely or 'false' self-employed contractor

The question thus is whether a contract of services concluded between a principal and a self-employed contractor is a genuine contract of provision of services between two freestanding and independent companies, or in reality is a contract of provision of labour where one contract party is subordinate to the other contract party, i.e. 'false' self-employed.

As mentioned above, this assessment is carried out by the judiciaries on a case-by-case basis, taking into account the criteria that determines status as 'an employee' as well as in some situations the criteria by the tax authorities used to determine status as 'an undertaking.'

Hybrid working life: self-employed as well as employee

It is possible for self-employed persons to have a hybrid working life. This means, that in some contractual relations they perform services with status as employees, e.g. employment contracts for project work on fixed-term or part-time contracts. For the duration of such employment contracts, the employee is entitled to pay and working conditions in employment legislation and any applicable collective bargaining agreements.

In other contractual relations, the same person may offer services as a self-employed contractor, where the terms are negotiated freely, including pay and other parameters for the provision of services. For the duration of such contracts of independent services, provided they are considered 'genuine' self-employed contracts, the person is not entitled to pay and working conditions in employment legislation or collective bargained agreements.

Effects of hybrid working life on the assessment of legal status

Such hybrid working life would from a legal point of view would require, that each contract of service is assessed on the merits of that contract alone. It is – in theory – irrelevant to the legal assessment of rights and duties in one contract relation, whether the person in general runs a business, or whether that person in other contractual relationships offer services as a self-employed contractor.

Hybrid working life as a modern way of working was recognised by the Governmental Disruption Council (*Disruptionsrådet*) in 2017–2018.³⁷ The purpose of the council was to 'make Denmark ready for the future and take advantage of the possibilities that robots, artificial intelligence and new business models create'. The final report included recommendations to accommodate a more modern hybrid working life.³⁸ Two outcomes of interest for this report:

1. The discussions in the Council paved the way for the first collective bargained agreement for platform work in Denmark, the Hilfr.dk-agreement, concluded in 2018.³⁹ The agreement determined pay and working conditions for persons performing cleaning services as employees via the Hilfr-app. The agreement did not apply to persons performing cleaning services as self-employed via the Hilfr-app.
2. The social security system was reformed to accommodate a hybrid working life, taking a universal income as the basis for calculating the working hours necessary to become eligible for benefits.⁴⁰ In this all forms of work were counted regardless of the differing status of the contract as employed or self-employed, as well as sporadic work, i.e. from platform work.

Hybrid working life has in earlier days been assessed in employment law cases before the ordinary courts, in industrial law cases for the application of collectively bargained agreements to individual service providers, as well as in competition law cases assessing the lawfulness of collective bargaining with a company, that has both employed and self-employed contractors performing the relevant type of work.

The cases are of an older nature, and the approaches of the courts vary.

Some decisions view the person as either self-employed or employed in all contracts. This was the case for an industrial arbitration ruling in 2010⁴¹ of the status of a number of journalists in relation to a collective agreement for freelancer journalists. In order to determine whether the journalists in question provided freelance services as employees

³⁷ <https://bm.dk/arbejdsmraader/kommissioner-ekspertudvalg/disruptionraadet>

³⁸ Danish Government, *Prepared for the future of work. Follow-up on the Danish Disruption Council*, februray 2019, https://bm.dk/media/9602/regeringen_disruptionraadet_uk_web.pdf

³⁹ N Munkholm, C H Schjøler, *Platform Work and the Danish Model – Legal Perspectives*, NJCL 1/2018, DOI: <https://doi.org/10.5278/ojs.njcl.v0i1.2487>; A Ilsøe, J Kristiansen, S K Andersen, C Jacqueson, M S Hvidt, *Hilfr-aftalen – et nybrud i det danske aftalesystem*, FAOS Novmber 2020.

⁴⁰ The Minister's briefing to the Parliament's Employment Committee, <https://www.ft.dk/samling/20171/almindel/BEU/bilag/378/1911149.pdf>, the associated letters to the relevant actors on unemployment benefits, <https://www.ft.dk/samling/20171/almindel/BEU/bilag/378/1911150.pdf>, and social benefits, <https://www.ft.dk/samling/20171/almindel/BEU/bilag/378/1911151.pdf>.

⁴¹ Industrial Arbitration ruling of 5 april 2010, FV2009.0015.

or as self-employed, the umpire took into account also the characteristics of the businesses of the journalist. The rationale was, that if a journalist owned and ran a genuine business, the journalist could not be a freelance employee with the newspaper, and as such could not be covered by pay and working conditions in the collective bargained agreement.

Some decisions take the hybrid approach and assess each contract on its own merits allowing employee status in some contract relations even for persons genuinely owning and running a business. This was the case in a 2005-dispute⁴² concerning collective bargained agreements for veterinary services to the Danish Veterinary, Food, Agriculture and Fisheries Agency (*Fødevarestyrelsen*) in relation to slaughterhouses. The competition authority allowed the collective bargained agreements to cover services provided also by genuinely self-employed veterinarians, as they - under the specific contract - provided services on the same terms and under the same level of instruction and control as the employed veterinarians.

The Western High court in 2014⁴³ also took the hybrid approach towards assessment of status under a specific contract of service. The person in question offered services both as self-employed and as employed to other contracting entities. The fact that he owned and ran a business did not affect the assessment in the specific contractual relationship. The Court based the assessment entirely on the merits of the isolated contract, and not on the existence of a business in general. The person was found to not have employee status as he was not in a subordinate relationship in relation to the specific contractor.

1.3.3 Category 3: Self-employed contractors

In Denmark, it is very common to provide services as a solo-self-employed contractor. The culture of entrepreneurship for generations is that professionals, e.g. IT-consultants, accountants and lawyers, as well as skilled workers, e.g. carpenters, bricklayers, and hairdressers, can start a company with themselves as the provider of services. Traditionally it is viewed as a positive lifestyle choice of the person involved, who want to run a business and have the freedom, independence and the economic possibilities, that such a life (expectedly) entail.

There is no statutory act determining the decisive criteria for being self-employed in relation to employment legislation and collective bargaining agreements. As mentioned above, having a CVR-number gives the right to provide services as a business. Having a CVR-number and using it in contracts for work, does not in itself determine the legal qualification of the contractual relationship as one between businesses. Registering a private individual business in the Business Register is easy, fast, fully online and with automatic and immediate effect. There is no material test. Upon registration a CVR-number is automatically issued, and the person can offer services as a business. Providing services with a CVR-number may nonetheless be used by courts as an indicator of status as self-employed.

⁴² Ruling of the Competition Authorities of 26 October 2005, j.nr. 3/1120-0301-0374/SEK/LOB.

⁴³ Western High Court ruling of 17 September 2014, U2015.197V.

The term solo-self-employed itself, is new in the Danish language, and does not in itself have a legal status, definition or category in law. There is no category for solo-self-employed in tax law, in labour or employment law, or similar. A company providing services as solo-self-employed, i.e. companies where the owner is the only person providing services, are treated as other companies in the market. It does not affect the status or legal framework whether the company has no, few or more employees.

The same with the term freelancer. The term freelancer is not a legal term. The term is used in everyday language to refer to persons who provides services on a project-basis or on a limited contract for services, and often as self-employed. The term has a positive, autonomous and empowering connotation, with freelancers deciding their own work schedules and being free between contracts of service. The term freelancer does not in itself define status as self-employed or as employed. Freelance work can be performed as persons working on several fixed-term employment contracts or as persons offering services a solo-self-employed not in an employment relationship.

Rights of self-employed contractors

There is no legislation specifically for this type of company. It is seen as a company and operates on the market entirely free and independently. There is not duty for contractors to treat self-employed contractors differently to other types of businesses, they are contracting with.

Self-employed contractors negotiate their contract terms with a contracting entity. There are no special contract terms governing contracts with self-employed.

Self-employed contractors are not covered by employment legislation nor are they entitled to engage in collective bargaining. Companies, who are covered by a collective bargained agreement, are not under a duty to follow pay and working conditions for the persons performing work as self-employed contractors.

One exception is the Danish Work Environment Act, where an 'employer' is responsible for ensuring a safe and sound working environment for any work performed for the employer, cf. section 2(1). An employment relationship is not a requirement for having health and safety duties as an 'employer'. The 'employer' must thus ensure the safe working conditions for work performed also by friends, family members, guests, unsalaried employees, and by solo-self-employed.

2 Access to effective collective bargaining

Industrial relations in Denmark are, as mentioned, to a large extent self-regulated.

Section 78 in the Danish Constitution⁴⁴ ensures a right to gather and organise in any association, including trade unions, without governmental interference. Anybody can freely form and join any association with any (lawful) purpose.

Article 11 of the European Convention of Human Rights (ECHR) on freedom of association protects the right to form and join trade unions. The ECHR is transposed into Danish law in 1996,⁴⁵ and as such is also binding law in Denmark.

The Statutory Act on Freedom of Association in Employment⁴⁶ protects the right to work regardless of union membership. The right to join any union and the right to not be a member of a union is protected, as the act prohibits employers from dismissals and refusal of employment based on the union membership or non-union membership status of a person.

There is no statutory act determining who can negotiate on behalf of the workers/employers or what is a trade union. The right to establish trade unions is considered an integral part of the freedom of association.

The principles of industrial relations were formally recognized by the September Agreement in 1899 between the LO (now FH) - Danish Trade Union Confederation and the DA (now DA) - Confederation of Danish Employers.

The September Agreement carved out the fundamental principles for the industrial relations system in Denmark. These principles continue to be the foundation of Danish industrial relations.⁴⁷ They include a recognition of the right for employees and employers to freely join trade unions and employer's confederations, the binding nature of collective agreements on signatories and members, a duty of peace, acknowledgement of the managerial prerogative, a prohibition against hostile conduct towards trade unions/employer associations, protection against unreasonable dismissal, and the role of shop stewards.

The September Agreement has been amended a few times since, the current version in force is the FH/DA Main Agreement of 2006.

Two statutory acts have been passed specifically to support and stabilise industrial relations.

⁴⁴ The Constitution of the Kingdom of Denmark, currently Act no 169 of 5 June 1953.

⁴⁵ Act on the European Convention on Human Rights, currently Act no 138 of 26 January 2022.

⁴⁶ Act on freedom of association in the labour market, currently Act no 424 of 8 May 2006.

⁴⁷ Ole Hasselbalch, *Labour Law in Denmark*, 5th edition, Kluwer Law 2019, 32; J Kristiansen, *The Growing Conflict between European Uniformity and National Flexibility: The Case of Danish Flexicurity and European Harmonisation of Working Condition* DJØF 2015, 25.

In 1910, the Act on the Labour Court and Industrial Arbitration Tribunals⁴⁸ was passed to ensure, that legal disputes concerning the understanding and administration of collective agreements would be settled by way of judicial review rather than by way of conflict. At the same time, the Act on a Public Conciliator⁴⁹ was passed to assist the negotiating parties during bargaining periods and pending industrial actions.

The statutory acts do not regulate the organisation of trade unions, collective agreements, the lawfulness of industrial conflicts or the lawfulness of a collective agreement.⁵⁰ These matters are organised by the social partners themselves and developed by the caselaw of the industrial judiciaries.

2.1 Concept of a collective bargained agreement

As mentioned no statutory legislation defines what is a trade union, who can be members of trade unions, which trade union can negotiate on behalf of which employees, the legal framework for collective bargaining, or the legal framework for collective action. Nor does legislation determine what is a collective agreement, the parties, the content, or the binding effects of a collective agreement. The legal source is the agreements between the social partners as interpreted in industrial caselaw.

The starting point is the September Agreement of 1899, which included a definition of a 'collective agreement' as

an agreement on remuneration and on working conditions between a employees' association as one party and either an employers' association or a single employer (undertaking) as the other party⁵¹

Although this definition is no longer expressed in the FH/DA Main Agreement, a collective bargained agreement contains either normative provisions on pay and working conditions, or procedural rules on the relationship between the social partners, i.e., a duty of peace, dispute resolution, cooperation, notices for industrial action, etc.

Apart from the material requirement of pay and working conditions, a collective agreement must on the employee side have a collectivity representing a group of employees. It is not a requirement, that the collectivity must represent or be connected to a trade union. The Labour Court assesses whether the party on the employee side is a collectivity.⁵² This means, that also agreements between alternative trade unions and employer associations / individual employers can be assessed and recognised as collective agreements by the Labour Court.

⁴⁸ Statutory Act on the Labour Court and industrial arbitrations, no no. 1003 of 24/08/2017. English <https://arbejdsretten.dk/labour-court/labour-court-of-act>

⁴⁹ The Act on Public conciliation in labour disputes, no 09 of 20 August 2002.

⁵⁰ Hasselbalch, *Labour Law in Denmark*, 2019, 51.

⁵¹ Hasselbalch, O., *Den Danske Arbejdsret I-III* (online at Karnov, Praktisk Arbejdsret) afsnit XXII, 1.1.; Kristiansen, J., *Den kollektive arbejdsret*, 2021, s. 247.

⁵² E.g. in Labour Court ruling of 21 november 1999 (AR 90.0007), where a small group of engineers had made an agreement with the employer. As the group had its own bylaws, and competent body, and the members could be exchanged with new employees or leaving employees, it had the character of 'an organised collaboration'. The agreement had the effect of a collective agreement.

The agreement must be a result of bargaining. It is however not a specific requirement, that the collective bargained agreement must be concluded under the threat of industrial action, meaning that also agreement concluded by the Christian Union (*Krifa*) and the Christian Employers' Association (*KA*), can be recognised as having status as a collective bargained agreement.⁵³

Finally, it is not a requirement, that the agreement or provisions are in writing. Oral agreements, or even practices turning into tacit agreements, can have the effect of becoming (part of) a collective bargained agreement. This follows the general rule, that oral agreements are as binding as written agreements, cf. the Danish Agreements' Act (*aftaleloven*), section 3(2).

The Labour Court has the executive competence to determine, whether an agreement has the status of collective agreement, cf. Labour Court Act section 9 (4). Any agreement is tested towards fulfilling the definition.

The scope of application both personal, i.e. which employees are covered, geographical, sectoral, and material (type of work or functions) are determined by the negotiations of the parties in the collective agreement itself.

Collective agreements are concluded at different levels. Main agreements are concluded at confederation level, Sector Agreements / Collective Bargained Agreements are concluded between trade unions and employers or employer associations, and Local Agreements are concluded at shop level between the shop stewards and the employer.

Collective agreements do not have erga omnes effect. There is no statutory duty obliging employers to sign a collective agreement, to follow a collective agreement or to be a member of an employers' association. Likewise, there is no general legal mechanism to extend the provisions of agreements to employers, who are not themselves bound by a Collective Agreement.

Collective agreements are binding only for the signatories and their members.⁵⁴ Employers can be bound by a collective agreement either by way of membership of an employer's association, who is signatory to a collective agreement covering the work performed, or, for unorganised employers, by way of concluding a collective agreement directly with a trade union covering certain work performed.⁵⁵

⁵³ Labour Court ruling of 27 May 2003, ARB 2002.287 determining that the agreement between the Christian Workers' Union and the Christian Employers' Association has the status of collective bargained agreement under Danish industrial relations law.

⁵⁴ This is well-established in caselaw, cf. Hasselbalch, *Den Danske Arbejdsret I-III, XXII, 4.2.4.* and e.g. Labour Court ruling no 5108 and Industrial Arbitration ruling FV of 5/9 1989.

⁵⁵ This used to be expressly stipulated in the Main Agreement between the LO and DA, and is well-established in caselaw. The Act on a Labour Court and Industrial Arbitration also presupposes, that an employer can be an individual party to a collective agreement, cf. section 13.

The binding nature of collective bargained agreement also means, that agreements concluded at a higher level forms a binding hierarchy of norms and rules, that sets the framework for the negotiations at lower level.⁵⁶

If an employer on the other hand is not a member of an employers' organisation or has not entered into a collective agreement, pay and general working conditions are regulated only in the individual employment contract and the sporadic and piecemeal statutory legislation providing e.g. a principle of equal treatment for part-time workers and for fixed-term workers.

The right to bargain collectively and the right to engage in industrial action to cover work performed for uncovered employers, including by way of secondary action, is widely protected, see below 2.5. and 2.6.

Collective agreements are enforced by mandatory dispute resolution mechanisms⁵⁷ and in the end by judicial review by the Labour Court or Industrial Arbitration.⁵⁸

2.2 Establishing trade unions

Trade unions can be formed freely and may organise their memberships according to their own choice.

Trade unions were traditionally formed as extension of the guild-system, and thus single industry unions. This to a large extent is still the case for the main trade unions, who are long-standing and most representative.⁵⁹ The traditional social partners are on the employee side the Confederation of Trade Unions, (now FH), that act on behalf of trade unions in the private as well as the public sector. In the private sector, the Confederation of Danish Employers (DA), is the bargaining partner for FH. In the public sector, three associations organise the employers, the State, the Regions and the Municipalities (KL), and are thus the bargaining partner for FH for public sector agreements. One trade union, the Managers (Lederne) is for persons in management positions as, with a view to counteract conflicts of interest, managerial staff are not covered by the traditional collective agreements.

Some of the non-traditional trade unions organise members across all industries, such as The Christian Union (*Krifa*), The House of Professionals (*Det Faglige Hus*) and The Free (*Frie*). These trade unions are growing in numbers, and – apparently⁶⁰ – Det Faglige Hus is currently by membership numbers the largest trade union in Denmark.

The agreements of alternative trade unions with employers or employer associations can also be recognised as collectively bargained agreements. Krifa has collective bargained agreements with the Christian Employers' Association (KA). Det Faglige Hus and

⁵⁶ Provisions can be supplemented or amended by agreements at shop level by a mandate to do so in the higher-ranking collective agreement.

⁵⁷ *Normen. Regler for behandling af faglig strid*, 27 October 2006 between the LO and the DA.

⁵⁸ Labour Court Act section 9.

⁵⁹ J Kristiansen, *Den Kollektive Arbejdsret*, 2021, p. 25-41; Inger Dübeck, *Arbejdsretten i støbeskeen*, 1979; Hasselbalch, *Den Danske Arbejdsret I-III, afsnit II Historik*. Praktisk Arbejdsret, Karnov.

⁶⁰ Statistisk Danmark as in press release from Det Faglige Hus: <https://www.detfagligehus.dk/om-os/nyheder/artikler/det-faglige-hus-er-danmarks-stoerste-fagforening/>

Frie do not have their own collective bargained agreements but provides legal services, pay insurance, unemployment benefits, and membership benefits to their members.

2.2.1 Category 1

It would be possible for non-standard workers in category 1 to establish their own trade unions, as the access to establish trade unions is not restricted.

If such a trade union concluded collectively bargained agreements with an employer or employer association, this could be assessed as a collective agreement, as the party on the employee side would be a collectivity provided that the agreement concerns pay and working conditions for employees.

There are no trade unions established specifically by or for non-standard-workers in Category 1.

2.2.2 Category 2 and 3

Non-standard workers in category 2 with an uncertain status, such as platform workers, have not established their own trade unions. They are often not members of trade unions, but traditional trade unions urge them to become members, in part with a view to be categorised as 'false' self-employed and thus have access to collective bargaining rights, below section 2.5.

Non-standard workers in category 3 as self-employed would not establish a trade union per se and has not done so. Persons performing work as self-employed can be members of trade unions, below, and would as such have access to certain membership advantages, but would not as a rule be able to bargain collectively for their own pay and working conditions as self-employed, as this would be in breach of Danish competition law, below section 2.5.

Outside the traditional trade unions one association has as a specific purpose to cater for both employees and self-employed. This is the case for the association ASE, that has a section for employees (*ASE Lønmodtager*)⁶¹ and a section for self-employed (*ASE Selvstændig*)⁶² each with their own board. ASE do not negotiate their own collective agreements but is an association purely for legal advice for employees, insurance, and unemployment benefits. ASE Selvstændig offers advice for those, who perform work as self-employed. The cover all sectors and trades.

HK Privat⁶³ is a large traditional trade union organising workers in offices, retail and technical services. HK Privat have decided to develop services – a guide⁶⁴ and a toolbox⁶⁵ – specifically to support their members, who work as freelance- or self-employed members.

⁶¹ <https://www.ase.dk/>

⁶² <https://www.ase.dk/selvstaendig>

⁶³ <https://www.hk.dk/omhk/sektoer/hk-privat>

⁶⁴ <https://www.hk.dk/raadogstoette/freelancer>

⁶⁵ <https://www.hk.dk/raadogstoette/freelancer/toolbox>

2.3 Becoming members of trade unions

The right to join trade unions is part of the freedom of association in Denmark. Membership of trade unions is specifically protected against retaliations from employers in the Statutory Act on Freedom of Association in Employment.⁶⁶

This however does not give a right to become a member of a specific trade union. Access to become a member of a specific trade union is determined by the bylaws of the trade unions.⁶⁷

Depending on the industry, the bylaws offer memberships based on the training or employment of a person, e.g. persons performing work within the industry, unemployed with a professional background or education in the industry, trainees in professional vocation or youth workers.⁶⁸ In industries, where it is more common to offer services as a self-employed, the trade union may determine that self-employed can become members and that services to members include services as self-employed. This is the case for HK Danmark, which is the largest trade union for professionals.⁶⁹ Less so in trade unions, that traditionally organise skilled and unskilled workers, such as the 3F, until now the largest trade union in Denmark,⁷⁰ or e.g. Dansk Metal, the metalworkers' union.

In addition to the bylaws of the trade unions, ordinary courts have over time developed generally applicable principles of law for the rights to be a member of (any) association, including trade unions and employers' associations.⁷¹ Early on, the courts determined that a trade union must treat membership applications equally and objectively (*sagligt*).⁷² This and other principles similar to those recognized in public administrative law, such as principles of transparency, proportionality, just cause, a right to information and consultation and the principle of legal expectation, sets out a legal framework for membership rights, that supplement the bylaws of the trade unions.

This also ensures a minority protection concerning access to membership and protection from exclusion. Membership applications must be treated equally and objectively (*sagligt*). Because a refusal of admission to, or exclusion from, an organisation may have negative consequences for an employee or an employer,⁷³ an employer and an employee generally have a stronger need for protection of freedom of association than an ordinary citizen. An individual employee and employer thus have a legal right to become a member of a relevant trade union or employer association.

⁶⁶ Statutory Act on Freedom of Association, *Foreningsfrihedsloven*, no 424 of 8 May 2006.

⁶⁷ E.g. 3F, the (second) largest trade union for unskilled workers, <https://www.3f.dk/-/media/files/artikler/om-3f/3f-love-2025-2028.pdf>

⁶⁸ E.g. 3F *forbundslove* 2025-28, sections 8 and 12.

⁶⁹ HK covers many industries - administration, graphic work, HR, IT, communication and marketing, customer service, laboratory and the environmental work, management, logistics and shipping, consulting, counselling and case handling, finance, health, sales and procurement, <https://www.hk.dk/blivmedlem>

⁷⁰ 3F, <https://www.3f.dk/bliv-medlem/optagelse/start>

⁷¹ Hasselbalch, *Foreningsretten*, Karnov Praktisk Arbejdsret.

⁷² Supreme Court rulings in U 1949.345 H, and U 1952.330 H, Jens Kristiansen, *Den Kollektive Arbejdsret*, 2021, p. 145 ff.

⁷³ Jens Kristiansen, *Den kollektive arbejdsret*, 2021, chapter 2.

The caselaw of the courts also protects persons from exclusion by ensuring a due process, transparency, the right to be informed and consulted, and protection against unfounded decisions.

Finally, according to the Statutory Act on Non-Discrimination in Employment, specifically the bylaws of labour market associations must respect the prohibition of discrimination concerning both access to membership, to participation in worker- and employer associations, and the advantages such membership gives.⁷⁴ The Non-Discrimination Act prohibits discrimination related to race, skin color, religion or faith, political views, sexual orientation, gender identity, gender expression and gender characteristics, age, disability, and national, social and ethnic origin.⁷⁵ Provisions in bylaws relating to the protected criteria directly or indirectly cannot be given legal effect to not accept a membership application, or to exclude a member.

The possibility to become a member of a trade union is thus quite wide. It is self-determined by the bylaws of the trade unions, but the bylaws must live up to general principles of public administrative law, and cannot be discriminating on protected grounds.

2.3.1 Category 1

It is generally not a requirement, that applicants must be in employment. Trade unions accept unemployed, trainees and students as well as employed. It is generally not a requirement, that applicants must be employed, and less so would being in employment but on non-standard terms be considered a ground for disqualification from membership.⁷⁶

In addition, the general principles of equal treatment, objectivity (just cause) and proportionality would protect persons performing work on non-standard working terms, even if the bylaws would allow for barring them from membership - regardless of the nature of the non-standard working terms.

I have found no evidence or literature or cases on trade unions excluding persons from membership because they are unemployed, part-time employed, fixed-term employed, temporary agency workers, 0-hour-workers, posted workers to Denmark, or are foreigners performing work in Denmark.

2.3.2 Category 2

Performing work as self-employed with an unclear status, e.g. platform work, would not in itself disqualify for membership. Indeed, trade unions encourage platform workers to become members, so trade unions can engage with the platform companies on behalf of their members.

Unclear status is, as described above in 1.3.2, often treated as a potential 'false' self-employment, with the effect, that the persons performing work should be treated as and should have rights as employees, not as self-employed.

⁷⁴ Statutory Act no 399 of 5 April 2024 on non-discrimination in the labour market, etc. Section 3 (4).

⁷⁵ Statutory Act no 399 of 5 April 2024 on non-discrimination in the labour market, etc. Section 1.

⁷⁶ E.g. Jens Kristiansen, *Den Kollektive Arbejdsret*, 2021, s. 146.

Membership is encouraged as a method to help clarify the correct categorisation and treatment of self-employed with unclear status.

2.3.3 Category 3

In Denmark, genuinely self-employed do not have rights as employees, and do not have collective bargaining rights. As a result, self-employed may be viewed as 'employers' and thus on the other side.

Self-employed may be excluded from membership in the bylaws of some of the more traditional trade unions. This would be considered objective and reasonable given the purpose of trade unions is to represent the employees against the employers.

On the other hand, often members are not necessarily asked when they join, and are not asked if they during their membership period starts providing services as self-employed. There is no available caselaw or other documentation on memberships being cancelled (against their will) for starting to offer their work as self-employed.

In addition, some trade unions expressly accept members, who perform work as self-employed, and even actively encourages their members to pursue a lifestyle as freelancers or self-employed. This is the case of the trade union HK for salaried employees, that has a website specifically aimed at providing service to freelancers and self-employed.

There is no caselaw on exclusion of members because they start their own business and offer services as a solo-self-employed, e.g. an employed carpenter starting his own business.

2.4 Internal voice in the trade unions

The social partners enjoy a wide margin of manoeuvre when determining which topics to pursue on behalf of their members. Members' rights of co-determination in trade unions primarily derive from the union's own bylaws. The bylaws lay down general rules on the operation of the organisation, including the establishment of governing bodies, the allocation of powers between those bodies, decision-making procedures, and the rights and duties of individual members.

The trade union is obliged to pursue the interests of their members. Such interests are often loosely defined in the bylaws as pay and working conditions of the members. As the demography of the membership group may change over time, this in itself changes the goals and priorities of the representatives in the bargaining process.

Collective bargained agreements are renewed every 2–3 years depending on the agreements themselves. Renewals in the private sector currently takes place in uneven years (last time in 2025), and in the public sectors (state, regions, municipalities) in even years (in 2026). The regularity of renewals means that members are in regular dialogue with their representatives on which topics to pursue.

The trade unions have a script for preparing for the next renewal, including different methods to determine which topics to pursue and prioritise. Members are entitled to participate in and to follow the procedures of the decision processes. The framework

deciding which topics to pursue and which groups of persons to bargain on behalf of is determined by different internal mechanisms – all including consulting the members and listening to their interests and suggestions.⁷⁷ The internal procedures include transparent procedures for sending out calls for participation in general assemblies, with due notice and to all members.

There is no general legal framework for the internal voice of persons in non-standard employment – being on non-standard terms (NSW category 1) or as false-self-employed or other unclear status (NSW category 2). There is no specific requirement of minority protections in the decision processes. The bylaws of the association have to be followed, and as a general principle, all members have a right to be treated equally. Minorities can gain influence through participation in the general assembly, by participation in elections to the board or in committees, and by posting proposals in the manner described in the bylaws.

The bylaws may contain specific policy aims in the form of ‘agreements’. This is the case for the 2025–2028 3F Forbundslove, that includes an agreement on diversity in 3F as a development of their aim that all levels of management are representative of the members. The Statement underlines, that

3F has as a goal to reflect its members, create engagement and equal value among its members, and develop the membership democracy in the organisation. These challenges are accepted and 3F wishes that all levels of the organisation are actively involved in this development. The traditional proud respect for all trades is now further developed to show respect also for representation at all organisational levels in relation to gender, age and ethnicity.

This development not only pursues that the leadership levels reflect the professions of the members, but also now actively must reflect the representation of gender, ages and ethnicity of the members. This aim applies to all boards at all levels from central confederation level to local committees. Every year a schedule of the results of these efforts are produced – at central level as well as at local level.

Caselaw has also established a protection for members, airing opinions against the majority. This applies to all members. The Eastern High Court in U 1976.426 Ø found, that exclusions of members for disloyal behaviour, i.e. airing opinions against the opinion of the central management board, were in breach of general principles of law. The court stated that membership of the management board or being employed in a trade union did not deprive a person of the right to make their opinions known and to pursue these by lawful means, even if these opinions are against the majority view of the board.

⁷⁷ e.g. 3F Forbundsloven 2025–2028.

2.4.1 Category 1: Non-standard working conditions

All members of a trade union can make their voice and opinions heard, there is a prohibition against exclusion and other sanctions for pursuing an interest of the members, as long as it follows the prescribed procedures.

There are no explicit minority protections or minority guarantees for the internal voice of persons with non-standard working terms.

The clearest protection of workers in non-standard working terms is the general principle, that all collective agreements are concluded as area-agreements, covering all work performed within a certain profession. This principle is not promoted only by the internal voice of non-standard workers. Indeed, the principle counteracts circumvention of the collective agreement by hiring in workers on alternative contract terms which is in the interest of the trade union as such – not just the interest of workers on non-standard contract terms. The effect is, however, that workers on non-standard contract terms benefit and do not need to raise this form of coverage through internal voice. The overall interests of the trade union align with the specific interests of the non-standard workers in category 1.

2.4.2 Category 2: Unclear status

Members, performing work with an unclear employment status, are entitled to participate in the procedures for determining topics, and make their views be heard.

For persons with an unclear status the trade unions would like to have more members, and the topic of categorizing false self-employed as employees is well-known.

Trade unions do pursue coverage for persons with an unclear or ambiguous status; again, the reason is traditionally to counteract circumvention by contracting persons in 'self-employed' contracts rather than as employees. The traditional collective bargaining agreements addressing 'false' self-employed in the building sector, and for hair-dressers, are examples of this.

Trade unions do also pursue coverage for genuinely self-employed persons, that in certain contractual relations provides services on employee-like terms. This is not necessarily 'false' self-employment, but more likely an example of a hybrid or fragmented working life. For the contracts, where persons, who genuinely run a business as self-employed, sometimes perform work on employee-like working terms towards a specific employer, it has been accepted that the trade unions may conclude agreements on their behalf for this specific contract. This was the case e.g. for the trade union for veterinarians. The mandate to bargain collectively for the self-employed was mentioned in the bylaws of the trade union, meaning, that the internal voice of the self-employed veterinarians was expressed in the foundation of the trade union.

In later caselaw, trade unions with members who are more likely to provide services as freelancers, have pursued coverage of freelancers, e.g. freelance journalists and

photographers.⁷⁸ The choice to do so was specifically the pursuit of coverage for members, providing services on 'freelance' terms, but on employee-like terms. Whether the choice to pursue collective agreements for this group of members specifically was motivated (only) by the internal minority voice of the members performing work on freelance contracts, or was a general approach of the trade union motivated as a response to developments in the labour market for their members, is unverifiable. The interests of the members in non-standard freelance contracts and of the trade union again seemed to align.

2.4.3 Category 3: Self-employment

The trade unions are not allowed to bargain for and conclude collective agreements for persons in genuine self-employment performing services on independent and self-employed terms.

The trade union HK tried to conclude a collective agreement, that covered members offering services as freelance translators or as self-employed translators. They concluded a collective agreement for solo-self-employed translators offering services through the digital work platform *Voocali*, which covers also genuine solo-self-employed. The choice to pursue and bargain for this minority group of members, translators offering services as self-employed or freelance, may be due to internal voice of the group or may be due to the overall interest of the trade union to cover all forms of work performed by their members.

The *Voocali*-agreement was disputed by the Competition authorities, and was later adjusted to not bind the genuinely self-employed translators. The agreement was later abolished, as it did indeed aim to cover also genuinely self-employed translators.

2.5 The right to bargain collectively

The lack of *erga omnes* effects or mechanisms places a strong interest on the trade unions to force un-covered employers to sign a collective agreement, in order to ensure the best possible rights for their members. Danish labour law recognises a wide right to engage in collective action with a view to obtain the best pay and working conditions possible for the workers.⁷⁹

The legal framework for the right to bargain collectively is found primarily in the general principles of industrial relations. The right to bargain collectively is not protected in the Constitution section 78 on freedom of association.⁸⁰ Parliament may interfere with and interrupt ongoing industrial action and may set up boundaries for industrial action. The ECHR article 11 specifically protects the right to engage in industrial action, and article 11

⁷⁸ A number of rulings in the early 00's from the Competition Authority and the Labour Court followed this development. Competition Appeals Tribunal Ruling of 10 September 2003, J.nr. 02-85.078 and others, ruled on the lawfulness under competition law of a notice of collective action for journalists providing services as 'freelancers'.

⁷⁹ This is well-established in caselaw, cf. Hasselbalch, *Den Danske Arbejdsret*, XXI, 1. and e.g. Labour Court ruling A2007.831 Nørrebro Bryghus, and Labour Court ruling AR2012.0341 Restaurant Vejlegården, the Labour Court expressly states, that the right to engage in industrial action is essential for the development of pay and other central working conditions.

⁸⁰ Hasselbalch, *Den Danske Arbejdsret I-III, afsnit XXII, 1.1.*, Karnov, *Praktisk Arbejdsret*; J. Kristiansen, *Den kollektive arbejdsret*, 2021, s. 247.

(2) sets the boundaries for any state or parliamentary interference in the activities of the social partners in this regard. There is no formal duty to negotiate with any organisation, but the risk of conflict, in reality, motivates most employers to do so. The Act on Salaried Employees establishes a duty to negotiate in good faith, but no obligation to conclude an agreement.

The framework is laid out by the social partners and developed by interpretations in the industrial courts.

The 1899 September Agreement confirmed the right to bargain collectively, and since then the right to bargain collectively has been confirmed as a general principle of labour law / industrial relations law, and thus applies to all industrial relations regardless of the parties and regardless of the level.

There is no statutory law or case law requiring a trade union to negotiate terms for non-members. There is also no such requirement for specific minority groups among the members.

Bargaining to conclude binding collective agreements is also limited by legislation in other areas of law. Most importantly, the Competition Act limits the bargaining power of the social partners, as bargaining for binding prices for undertakings including self-employed will be in breach of competition law. The Competition Act since 1937 specifically exempts 'agreements on pay and working conditions' from the scope of competition law. The delimitation intentionally mirrors the (then) definition of a 'collective agreement' in the FH/DA Main Agreement.

This intended dichotomy between competition law and industrial relations law has over the years worked well. It has been tested both with regard to the initial bargaining process, the intended scope of a collective agreement, and assessment of specific service providers as employees or solo self-employed persons under a specific collective bargained agreement.

For platform work, however, the competition authorities have taken a different route than the social partners. The Competition Board in august 2020 ruled, that platform workers for the platform company Hilfr.dk were not employees and as such, the collective agreement concluded for the platform workers was in breach of competition law. This conflict has not yet been resolved, also not by the EU Commissions notification of collective bargaining for self-employed.

2.5.1 Category 1: Non-standard working conditions

Employees on non-standard working terms may have their interests pursued in collective bargaining processes on the same level as employees performing work on standard terms. As long as the purpose is within the interests of the trade union, this can be a lawful purpose.

Employees on non-standard working terms may also participate in industrial action.

2.5.2 Category 2: Unclear status

Trade unions that have members performing work as self-employed may conclude collective agreements on behalf of these members for work they perform, where the work is performed on employee-like working conditions. The employee-like working conditions is with a view to counteract circumvention of the collective agreements by employers concluding "false" contracts with independent service providers.

The right to include this group in the bargaining process is not a right to generally extend rights to self-employed. The purpose is not to recognise the dependency or challenges as free agents in the market for the 'false' self-employed, but overall, it is to protect the collective agreements from circumvention.

Caselaw gives examples of trade unions pursuing pay and working conditions on behalf of freelance journalists and photographers. Those pursuits have been assessed as potential breaches of the Competition Act – in the form of pricelists for persons, that could potentially be considered self-employed contractors delivering products in the form of photos and journalistic texts. A few rulings developed the delimitation between collective agreements and prohibited price lists in (then) competition law.⁸¹ The rulings illustrate the fact, that the trade union pursued collective agreements on behalf of their members, that were not in traditional employment relationships.

Another example of trade unions pursuing collective agreements on behalf of persons performing work on contracts with an unclear status is the Competition Authorities' assessment of the bylaws of the Trade Union for veterinarians. The bylaws included a provision giving the trade union executive bargaining right for prices and fees for veterinary services for the practicing veterinarians. This provision had been used to conclude collective agreements with e.g. the Danish Veterinary, Food, Agriculture and Fisheries Agency (*Fødevarestyrelsen*) for services to the slaughterhouses. The collective agreement covered both employed and self-employed veterinarians for the same services to the slaughterhouses.⁸²

A third example is the collective agreements with the digital work platforms, where the contracts are non-standard and the collective agreement in itself is non-standard. 3F the trade union in 2018 concluded a collective agreement with the Danish platform company hilfr.dk as a pioneering agreement in the new digital economy of providing services via digital platforms. Hilfr.dk is a platform for cleaning to private customers, and is started by Danish entrepreneurs. The Danish owners wanted to have a collective agreement for the cleaners in order to ensure, that they had decent working conditions. 3F concluded a very unusual agreement in 2018, giving the platform workers an individual choice of performing work as employees or as independent contractors to Hilfr.dk. The agreement has been re-negotiated, and the 2025-version hilfr2 continues to cover

⁸¹ For a full account of this development, see Munkholm and Schjøler, Platform Work in The Nordics, Nordic Journal of Commercial Law 1/2018, DOI: <https://doi.org/10.5278/ojs.njcl.v0i1.2487>.

⁸² Ruling of the Competition Authorities of 26 October 2005, j.nr. 3/1120-0301-0374/SEK/LOB, <<https://www.kfst.dk/media/13665/20051026-afgoerelse-praktiserende-dyrlaegersarbejdsgiverforenings-vedtaegter.pdf>> (accessed 26 April 2026).

platform workers with both the usual pay and working conditions in the cleaning industry, and also provides an entire chapter on algorithmic management.

The last example is the trade union HK, that concluded an accession agreement with a digital platform, Voocali.com, for professional translators providing services to private and public entities. The accession agreement between HK and Voocali entailed that the translators providing services as genuine self-employed contractors should be paid at least the same as in the collective agreement for salaried employees (*HK's Funktionæroverenskomst*), as mentioned above in 2.4.

2.5.3 Category 3: Genuinely self-employed

There is no extension in Danish industrial relations law, that trade unions may bargain on behalf of self-employed persons, only the agreement to counteract circumvention by “false” self-employed contracts.

If a person *genuinely* runs their own business as a solo self-employed person and performs work under terms that are *not* similar to those under which employees perform work, the person in question is considered an independent market actor. Any pursuit of agreements determining prices (fees) regarding their services would be outside the scope of labour law and could be in breach of competition law.

An employer or employer association, who is met with a demand for a collective agreement that covers also self-employed, may refuse to engage with the bargaining efforts. Should the trade union give notice of industrial action, the employer or employer association can submit a claim to the Labour Court for unlawful industrial action, as it pursues a binding collective agreement, that does not concern ‘pay and working conditions’, i.e. rights of employees. Likewise, the employer can submit a claim to the competition authorities for breach of competition law, by bargaining for fixed prices on behalf of undertakings.

2.6 The right to take industrial action⁸³

Trade unions may engage in negotiations with uncovered or unorganised employers or with a view to renew agreements with employers/employer associations to promote the interests of their members. Employer associations may bargain on behalf of their members and may conclude agreements with the trade unions on behalf of employers. An employer is persuaded to participate in the bargaining process by way of the threat of industrial action – there is no general statutory duty to engage in bargaining.

If negotiations in themselves are unsuccessful, the social partners may engage in industrial actions. Industrial actions take place regularly in all sectors. General cross-cutting conflicts involving all sectors are rare and have not occurred since 1998.

The most common forms of industrial action are strikes and blockades against an employer, or lockouts and boycott against unionised employees.

⁸³ Hasselbalch, *Labour Law in Denmark*, 2019, Chapter 5; J Kristiansen, *Den Kollektive Arbejdsret*, 2021, pp. 479-522; Hasselbalch, *Den Danske Arbejdsret I-III; afsnit XXIV*, Karnov, Praktisk Arbejdsret Online.

Legislative interventions to resolve an ongoing and long industrial conflict are rare. In 2013, the parliament intervened to end a national lock-out of schoolteachers after 3,5 weeks of conflict. There are no defined criteria in legislation for such state intervention, which are assessed on an ad hoc basis, often with a view to the economic consequences for society.⁸⁴

2.6.1 The legal nature of industrial actions

Lawful strikes and lockouts in effect terminate the employment relationship for members of the trade union involved. The employment relationships are not only suspended but indeed severed.⁸⁵

Blockades have the effect, that members of the trade union cannot take up employment with the affected employer/employers. Boycott means, that employer/employers refuse to employ members of the affected trade union.

Members of a trade union are by way of their membership obliged to follow the decisions of the trade union to engage in industrial action. This is part of the membership duties of the trade union members. Not following the lawful strikes/blockades of their trade union is ground for exclusion, and at least is ground for.

In effect, the trade union terminates the employment relationship of their members when engaging in industrial action against an employer/employers.

The procedures for engaging in industrial action on behalf of the members are often stated in the bylaws of the associations or in the main agreements between the confederations, e.g. the DA/FH Main Agreement section 2. Engaging in industrial action does not require ballots among members but instead can be decided by 'a competent organ' in the association.⁸⁶ Engaging in industrial action requires notices, for organised employers agreed to notices in the Main Agreements, e.g. the DA/FH Main Agreement section 2 prescribes 14 day notice first, and then 7 day notice second. For un-organised employers the notice must be the individual notice periods of the employees affected.

During a lawful industrial action, where the members are without income, the social partners financially support their members with their 'conflict funds'.⁸⁷ Persons on strike/locked-out are not eligible to receive unemployment benefits from the State, due to the principle of non-intervention of the State in matters relating to industrial relations, including a principle of not supporting or funding one side or the other.

After an industrial action is finished, both parties have an interest in normalising the relations. This means, that both parties aim to continue the work in a way, that to the widest extent possible excludes the disagreements during the conflict. It is a general principle and part of the duty of peace of the employer, that the employer re-employs the

⁸⁴ J. Kristiansen, *Den Kollektive Arbejdsret*, 2021, pp. 538-550.

⁸⁵ Hasselbalch, *Den Danske Arbejdsret I-III, afsnit XIV*, 3.7.2. Karnov, Praktisk Arbejdsret Online

⁸⁶ Kristiansen, *Den Kollektive Arbejdsret*, 2021, p. 151; Hasselbalch, *Den Danske Arbejdsret I-III, Afsnit XXVI*, 2. Karnov, Praktisk Arbejdsret online.

⁸⁷ E.g. as explained by 3F, <https://www.3f.dk/find-svar/dagpenge/naar-du-er-i-konflikt-kan-du-faa-penge-fra-fagforeningen>; Hasselbalch, *Den Danske Arbejdsret I-III, afsnit IV*, 3, Karnov, Praktisk Arbejdsret Online.

actioning members in their former positions (*fortrædigelsesklausuler*).⁸⁸ The duty to re-employ and not boycott organised employees can be subject to technical or economic means. Not re-employing former employees is considered a breach of agreement, and the employer must pay a penalty to the trade unions. A number of rulings assess whether a refusal to rehire employees, who have been on strike, is indeed caused by technical, organisational or economic reasons.⁸⁹ Also, a non-retaliation clause is an integral part of any new or renewed collective agreement, prohibiting harassment of unionised employees who have been engaged in the strike, as well as prohibiting harassment or un-organised employees who did not participate in the strike.

Employees, who are not members of the specific trade union,⁹⁰ are not affected by the trade union's strike or blockade.

2.6.2 The lawfulness of industrial actions

There is no statutory regulation specifically on the legal framework of industrial action. It is the executive competency of the Labour Court, cf. the Labour Court Act section 9, to assess the lawfulness of industrial action. The caselaw of the Labour Court and the literature on the topic was in 2003 summed up by the main social partners, the DA and (then) LO, in a report on the right to engage in industrial conflict in support of a collective agreement. The conclusion of the report was cited by the Labour Court in a 2012 principled ruling on the right to industrial action:⁹¹

Questions concerning the legality of notified collective industrial action or of the conflict notices issued in that connection, as well as the question of the legality of the use of collective industrial action in support of demands for a collective agreement in areas where no collective agreement has been concluded, fall within the jurisdiction of the Labour Court pursuant to section 9(1), nos. 3 and 5, of the Labour Court Act.

The case law of the Labour Court shows that the court sets out a number of criteria that always form part of the court's assessment of individual cases. The criteria are as follows:

The overall character of the conflict. There must exist between the employees' organisation and the employer a conflict of interests, i.e. a disagreement as to whether a collective agreement is to be concluded or renewed.

The purpose of the conflict. The conflict must pursue a reasonable trade union purpose. The purpose of the trade union must be to obtain a collective

⁸⁸ Hasselbalch, Den Danske Arbejdsret I-III, afsnit XXVI, 5, Karnov, Praktisk Arbejdsret Online.

⁸⁹ E.t. Labour Law Ruling AR 2010.0525 where the conflict had lasted only a few hours, and it was evident, that there were no objective businessrelated reasons for choosing not to re-employ the affected three employees.

⁹⁰ There is per se not a protection of an individual's right to strike. Individual employees may, of course, out of solidarity participate in an industrial action by not performing work. This would, however, be in breach of the individual employment contract, and can be met by immediate termination.

⁹¹ The Labour Court in AR 2012 341 Vejlegaarden, cited the report of the DA and LO (now FH) Report on the right to engage in conflict with a view to support a demand for a collective agreement of 17 June 2003. <https://arbejdsretten.dk/media/15749/ar20120341-dom.pdf> In this report, the social partners describe the existing legal framework for collective action in Denmark.

agreement with an employer, who has work performed, that naturally falls within the trade union's area of occupations. A conflict aimed at obtaining collective agreement coverage for work outside the types of work performed by the members of the trade union is unlawful. [...] In the assessment [...] it is irrelevant whether the organisation currently has any members employed at the undertaking affected by the conflict. [...]

The means of the conflict. The measures used by the trade union in order to convince the employer to conclude a collective agreement must in themselves be lawful. The limits [...] are determined by the Labour Court, taking into account any overarching legal bases in the form of legislation or agreements. The trade union's principal means are strike and blockade; the employer's are primarily lockout and boycott. In practice, it will often be of decisive importance for the employees' organisation to support the main conflict by means of a sympathy conflict. [...].

The scope and effect of the conflict. The objective (the collective agreement) that the employees' organisation seeks to achieve through the use of a conflict must be in reasonable proportion to the means (the collective industrial action measures) employed [...]. Such a "proportionality assessment" is carried out by the Labour Court.

The requirement of a lawful purpose delimits the types of agreements, that trade unions can pursue on behalf of their members. On the other hand, the purpose and interest of the trade union is hypothetical and does not require that members currently are employed at the employer in question.⁹² 'Pay and working conditions' is understood as delimiting the bargaining efforts to pursue working terms for members who are employees, not pay and working terms for members, who are self-employed.

2.6.3 Other relevant forms of lawful industrial actions

In addition to the legal framework for the main conflict, a few other forms of conflict are lawful and not in breach of the duty of peace/the individual work contract.

Members of a trade union have a right to refuse to perform 'strike-work' – i.e., a right to refuse to perform work that is affected by a lawful strike initiated by the trade union.⁹³ This general principle of labour law recognises the protection of the solidarity of trade union members, and ensures, that members of a trade union are not used to undermine – or mitigate the effects of – a lawful strike initiated by other members of the same trade union. An employer struck by industrial action may want to move the affected work to be performed by other employees, hire new employees, hire-in temporary agency workers, or try to outsource the work. When this takes place, members of the same trade union have the right to refuse to perform the 'strike-work' without retaliation or sanctions from their employer. The right to refuse to perform 'strike-work' applies

⁹² As stated in Labour Court ruling AR2012.0341 Restaurant Vejlegården, likewise in Labour Court rulings AR 2016.0633 concerning a farmer with no current trade union members in employment, and in AR 2015.0083 concerning Ryanair establishing a base in Copenhagen.

⁹³ Jens Kristiansen, *Den Kollektive Arbejdsret*, 2023, p. 583 ff.; Ole Hasselbalch, *Den Danske Arbejdsret I-III*, afsnit XXIII, 3.2.1.

regardless of whether the member is employed at the same undertaking, works for subcontractors/suppliers to the undertaking subject to the strike/blockade, or indeed is a temporary agency worker called in to cover the strike work. This right is exercised as an individual as a practical and protected expression of solidarity. It can be exercised only by members of the relevant trade union, or trade unions in the same confederation, and can be exercised only concerning the specific work that is the object of the main strike or blockade. The right to refuse to perform 'strike-work' does not require a decision by a competent organ or a notice to an employer, as it is an individual right to refuse work. Non-members cannot refuse to perform strike-work per se.

Trade unions or employer associations may choose to engage in secondary – or sympathy – action to support a main lawful industrial action initiated by other trade unions or employer associations in the same confederation.⁹⁴ Secondary action is a right exercised as a collective right by e.g. the trade union, which then affects all the members of the trade union performing work in other areas of the affected employer, or for subcontractors and suppliers. In order for secondary action to be lawful a few requirements must be met, i.e., the main industrial action must be lawful, a notice must be given, the secondary action must be suitable to affect the main action, it must often be decided by the competent organ, and the overall effects of the main action and secondary actions must be 'proportionate' to the aim.

2.6.4 Category 1: Non-standard working conditions

Members of trade unions, who are employees in an undertaking subject to industrial action are obliged to participate in industrial action. This is a duty of all members – regardless of the non-standard terms of their employment contract.

Part-time workers and fixed-term workers can engage in industrial action as any other employee. Fixed-term workers, whose contracts expire during a strike, do not have a right to be re-employed after the strike is over.

Temporary agency workers are employed with the temporary work agency. Members of trade unions who perform work as temporary agency workers can participate in industrial actions directed against the temporary work agency. Temporary agency workers are on the other hand not directly affected by an industrial action against a user entity, where they are deployed to temporarily perform work. Temporary agency workers are affected by a conflict only if they are members of the trade union, and if so, in case the temporary work agency is part of the conflict, or if they can refuse to perform strike-work, i.e. work affected by the strike against the user undertaking. The temporary agency workers must continue to perform their work at the user undertaking, also if the work is the same type of work, that is the subject of the main conflict against the user undertaking and the user entity's own employees are no longer performing the work.

Temporary agency workers (trade union members), who are deployed to the user undertaking at the time of the strike against the user undertaking, can not refuse to perform their work on grounds that the work is strike-work. The work of the temporary

⁹⁴ Jens Kristiansen, *Den Kollektive Arbejdsret*, 2023, p. 573 ff.; Ole Hasselbalch, *Den Danske Arbejdsret I-III*, afsnit XXIII, 3.2.2.

agency workers is not affected by the strike, and the temporary agency workers must continue to perform their own work during the strike. If the user entity attempts to shift the work of the employees on strike to the temporary agency workers, this can be refused as strike-work. The temporary work agency nor the user entity may force or sanction the temporary agency workers for refusing to perform the strike-work of the employees in the user entity.

Temporary agency workers (trade union members), who are not deployed to the user entity at the time of the strike, but whom the user entity attempts to hire in to cover the strike-affected work, can refuse to perform the strike work. In effect, for temporary agency workers, who are usually free to decline deployments to a user undertaking, the right to refuse deployment because of the strike-work rule seems superfluous.

Temporary agency workers (trade union members) will become part of a conflict, if their trade union decides to engage in sympathy action. Sympathy actions may involve subcontractors to the user entity, including temporary agency services. Choosing to engage with this is the choice of the trade union. If sympathy action is initiated and depending on the terms of the sympathy action, the temporary agency workers are entitled to – indeed are obliged to – refusing services to the user undertaking.

0-hour contracts or other on-call employees who are members of the relevant trade union can – and are obliged to – participate in an industrial action against their employer. Likewise, they are obliged to not take employment as part of a blockade. The protection for 0-hour- contractors and other on-call employees, i.e., the right to re-establish the relations as before the industrial action, is very weak, as the 0-hour-contractors did not have a specific right to a number of working hours. There is no caselaw yet on retaliation against 0-hour-contractors.

2.6.5 Category 2: Unclear status

Persons performing work as false self-employed or with an unclear status could be obliged to participate in industrial actions. Members are – as part of their membership duties – obliged to participate in industrial action.

This duty to engage is very wide-ranging and applies to all members regardless of their employment status. Engaging in a strike or being struck by lockout however presupposes, that the member is in an employment relationship.

There is no caselaw on an assessment of persons being in ‘false’ employment relationships and engaging in a strike or blockade.

In April 2026 Wolt couriers decided to take ‘algorithmic action’ against falling pay-models by not taking orders but instead engaging in protests.⁹⁵ The same took place in February 2021 due to a new payment model.⁹⁶ It is an action organised by the couriers themselves, as most couriers are foreigners and not members of trade unions. Wolt

⁹⁵ As recounted in the media, e.g. Zetland press, <https://www.zetland.dk/historie/s5pES0UC-a8yvV4M2-c61e5>

⁹⁶ As recounted in the media, e.g. https://www.bt.dk/samfund/lige-til-spiisetid-wolt-bude-strejker-mod-ny-aflo-enningsmodel?gaa_at=eafs&gaa_n=AVngi4h_TUYZwVoHH86LpicuSkKemlGyv3RMCjSe6Sa_yCCJJW5S_BZ-cKo9&gaa_ts=6a4fa329&gaa_sig=peiPYvFYc13s50Pi-IIOEzYVhD0d2X6siE_Zxngs3VaYOrZexMG2pRCQhVY5GQWh02X1zprYTv1I3t3vPnGj_Uw%3D%3D

states that couriers are free to take or not take work as they please and that enough couriers continue with their services during the protest. The action did not count as a traditional 'strike' or 'blockade', and no one challenged the lawfulness of the action under collective bargaining law.

If a member is not in an employment relationship, they are still obliged to follow the industrial action as providers of services.

This has been assessed by the Supreme Court in the ruling U 2002.82 H, where a freelance photographer was excluded from the Journalists Trade Union. A conflict was initiated as the media houses (the employer) refused to pay prices according to a new price list for the products of freelance photographers. The Trade Union initiated a blockade against the media houses, and photographers were not allowed to deliver materials to them until they consented to pay the new prices. One freelance photographer continued to deliver photos to a media house targeted by the blockade, and the member was excluded. The Court found that the decision to impose a blockade on deliveries was a collective action in support of payments for services. It was of no effect on the validity and the lawfulness of the action under labour law that the action in support of the list *could be rendered unlawful under the Competition Act*. This did not give the member reason to believe that his deliveries were exempt from the blockade. The exclusion was thus upheld.

The mechanism of imposing a blockade against an employer also binds freelancers that are members of the same trade union. The duty not to supply services rests on members performing work as employees as well as member performing work as self-employed.

2.6.6 Category 3: Genuinely self-employed

Genuinely self-employed cannot be part of a regular strike action, nor are they subject to be locked-out.

Genuinely self-employed who are members of a trade union are – according to the supreme court ruling of 2002 – obliged to stop providing services to an undertaking, that is the target of a blockade from the trade union.

The legal basis is the duty of all members of the trade union to follow the collective decisions taken by the trade union. If it is decided to stop providing services to an undertaking and a genuinely self-employed person continues to offer services to the company in question, this would constitute grounds for exclusion from the trade union.

From the trade unions point of view, a freelancer that does not respect a blockade is in breach of duties towards the trade union, regardless of the position of the Competition Law.

The perspective of the Competition Authorities on this point would be, that engaging in collective actions as a genuine undertaking, is in breach of competition law.

As such, again, the labour law and the competition law does not align.

2.7 The effects of a collective bargained agreement

The Danish system is 'voluntary'. Collective agreements are binding only to the signatory parties and their members. There is no statutory duty to follow a collective bargained agreement, and there is no system to give collective bargained agreement universal effect. If Parliament so decides, collective agreements can be given *erga omnes* effect on a case-by-case basis. This happens only when supported by the social partners. Erga omnes effect of a collective bargained agreement was the chosen format for transposition of the part-time directive in 2002, where the legislators elevated a transposition agreement between the DA and the FH to general binding law.⁹⁷ More recently in 2020, the social partners with a view to counteract social dumping in the road transportation sector (goods and persons) recommended the legislators to adopt a duty to follow the pay-level of the collective bargained agreement concluded by the most representative social partners. A Parliament agreement supporting this, in turn eased the adoption of the EU Road Package in 2022.⁹⁸

The voluntary model means, that the signatories negotiate the personal and material scope of each collective agreement. Employers, who are bound either as signatories or as members, are then obliged to follow the collective agreement according to the scope set in the agreement.

Breach of a collective agreement is sanctioned by heavy fines discretionary set by the Labour Court, cf. Act on a Labour Court cf. section 9 and section 12.

The general approach of the social partners when concluding collective agreements is that agreements are area-agreements. This means, that the agreement covers all work performed by employees at the company.

Collective bargained agreements apply to the work actually performed regardless of the union membership status of the employees. The employer must apply the provisions to all workers performing work covered by the collective agreement notwithstanding membership of the signatory trade union, membership of another trade union, or no trade union membership at all.

The binding effect towards all work performed is likewise not affected by atypical contractual terms for employees, e.g. part-term employees, fixed-term work, casual or on-call workers, or temporary agency workers. As long as the person is employed or working on employee-like terms and performing the type of work covered by the agreement, the collective bargained agreement must be followed. This is agreed to with a view to counteract speculation in employment contracts on terms, that undermines the effect of the collective bargained agreement.

The collective agreement as a rule does not apply to external entities. An employer, that contracts in subcontractors to perform work with their own employees, or who outsources tasks to external entities, are not obliged to follow the collective agreement for

⁹⁷ The part-time act adopted in 2002 (now Act no 1142 of 14 September 2018), with the DA/LO part-time agreement as an appendix, retsinformation.dk/eli/lt/2018/1142.

⁹⁸ Ministry of Transportation, press release January 2020.

employees in other entities. The same is the case for external entities performing work as self-employed. The distinction continues to be the fundamental distinction between 'pay and working conditions', i.e. for employees, and on the other hand contract terms for external providers of services.

Disputes have arisen as to the understanding of the scope of collective agreements, including interpreting if the scope is intended to extend to include 'false self-employed', freelancers, or other hybrid working situations.

2.7.1 Category 1

Generally, employees with non-standard working terms are aimed to be included, in order to counteract speculation in circumvention by creating alternative contract forms, and in order to give the trade union the most influence and power in the workplace as possible.

In order to ensure equal treatment and ensure, that all employees are covered with good quality working conditions, the collective bargained agreements often specifically cover employees on part-time, fixed-term, on-call-, or ad hoc contracts, as well as employees that are foreign, elderly, have a disability, or work on social contracts such as flex-job-contract, etc.

In addition, delimiting the application of the collective bargained agreement from applying to work performed on non-standard working terms, would potentially be in breach of the EU law principle of equal treatment transposed in the statutory acts on Part-time Work and Fixed-term Work, unless such unequal treatment can pass the justification test.

For newer forms of non-standard contracts, such as 0-hour contracts, temporary agency workers, on-call-freelance workers, the collective bargained agreement would apply unless specifically excluded.

The author has not found indicators, that such new forms of work are excluded from the scope in the period, where they perform work. Often these contracts are very short – perhaps for only a few hours – and the pay and working conditions apply during the hours worked, but not outside the hours worked.

2.7.2 Category 2

Unclear status will be assessed and solved by judicial review, often as part of a claim for breach of agreement by the employer. If persons with unclear status are assessed as employees, then the terms of the collective bargained agreement must be followed.

If persons with an unclear status are assessed as genuinely self-employed, the collective bargained agreement must not be followed, and the employer is not in breach of agreement.

This was the situation in the 2010 Industrial Arbitration ruling, FV 2009.0015. The ruling assessed which of the freelance journalists working at the entity were covered by the collective agreement for freelancers, and who were on the other hand genuinely self-employed and not covered by the agreement. The assessment was made on the basis

of the merits of the situation as a whole, not the contractual assigned status. The umpire included elements relating to the running of a company, such as having an accountant, marketing their services to other customers, having a brand promoted, etc. Such elements are in effect assessing whether the person runs a business in general, and are not isolated to assessing whether the specific contract is performed on business terms or on employee terms. The umpire concluded that some freelancers were found to be freelancers providing services as employees to the media house and thus covered by the collective agreement for freelancers. Other freelancers were found to provide services as genuinely self-employed service provider in general in the market, and thus also to the media houses, and as such they were not covered by the collective agreement for freelancers.

For persons performing work in a hybrid lifestyle sometimes as genuinely self-employed contractor and sometimes as employee, the system is thus not yet very accommodating of a hybrid lifestyle.

2.7.3 Category 3

Collective agreements do not cover self-employed.

An employer is not obliged to follow collective agreement provisions for work, that is performed by genuinely self-employed persons in contracts, where they are providing services as genuine undertakings.

2.8 Enforcement of a collective bargained agreement

Denmark has a specialised industrial dispute resolution system. Collective agreements are enforced by mandatory dispute resolution mechanisms, in the end by judicial review by the Labour Court or Industrial Arbitration.⁹⁹

The industrial dispute system deals with any industrial disputes, meaning any disputes relating to collective agreements. As the system deals with industrial relations, it is the parties to the collective bargained agreement who are parties in the dispute resolution system, and thus have access and locus standi in this system, i.e. trade unions party to collective agreements and on behalf of their members, individual employers party to a collective bargained agreement, and employer associations party to an agreement and on behalf of their members. The industrial dispute resolution system is found in part in the Statutory Act on a Labour Court and Industrial Arbitration, and part it is found in the DA/FH Agreement on Standard Procedures for Resolution of Industrial Disputes (*Nor-men*).

Individual employees cannot bring individual claims in the industrial dispute system, it is the industrial collective entities, that have locus standi as the parties to the agreements in question. Individual claims for breach of agreement can be brought by the trade union on their behalf in the industrial dispute system.

⁹⁹ *Normen. Regler for behandling af faglig strid*, 27 October 2006 between the LO and the DA, The Statutory Act on a Labour Court and Industrial Arbitration (*Arbejdsretsloven*), no 1003 of 24 August 2017 section 9.

Individual claims for breach of employment terms, including terms found in collective agreements, of their members, or by the individual or the trade union in the ordinary court system, if the claim has nothing to do with collective agreements. Claims for breach of individual contract terms, or for breach of employment legislation, e.g. right to equal treatment or right to holiday pay, are assessed in the ordinary courts. Trade union members have as part of their membership rights free legal aid.

Individual employees, who are not a member of a trade union bring claims to the ordinary courts as private claims at their own cost, at par with other private claims before the ordinary courts.

All parties to collective agreements must follow first the procedures in the Standard Rules on Resolution of industrial dispute by the FH/DA. Although, the Standard Rules are an agreement for dispute resolution procedures between two private confederations, the FH and the DA, in 1934 an amendment of the Labour Court Act prescribed, the Standard Rules as the declaratory rules for dispute resolution in all industrial relations. This provision, now in section 33 of the Labour Court Act, prescribes, that signatories to collective agreements must have adequate rules in place for settling industrial disputes, and if they do not, the Standard Rules will apply.

The Standard Rules for dispute resolution binds members and signatories to any collective agreement. Employers not participating in the Standard Procedure are in breach of agreement, which can be assessed by the Labour Court, and a penalty can be issued.

The first stop is the shop steward (*tillidsrepræsentant*) All workplaces covered by a collective agreement has a shop steward elected by the trade union members working at the entity. The rules on being eligible for election and being able to vote are found in the bylaws of the trade union. More on that below at III Information and consultation.

If the collective agreement is not followed, the shop steward will initiate a dispute resolution procedure according to the Standard Procedures. In this, the shop steward will represent any person, who are experiencing that their rights are not adhered to. Shop stewards look after the interests of the trade union in making sure, the collective bargained agreements followed at shop level. Breach of collective bargained agreement is a breach, regardless of whether the breach occurs for standard workers or non-standard workers.

If the negotiation and mediation procedures are unsuccessful, the dispute will in the end be resolved by binding judicial review in the industrial judiciaries.

Disputes about interpretation of collective bargained agreements are assessed by Industrial Arbitration, as stipulated in the Labour Court Act chapter 2. Disputes about breaches of collective bargained agreements, including issuing penalties for breach of collective bargained agreements are exclusively the competence of the Labour Court, as stipulated in the Labour Court Act section 9.

As the dispute resolution rules are binding, each of the parties to the agreement has an obligation to take part in the proceedings of an Industrial Arbitration Tribunal, if the other party so wishes. A refusal to take part in the proceedings of an Industrial

Arbitration Tribunal is considered as a serious breach of the collective agreement which results in a heavy penalty, cf. the Labour Court Act section 12.

If a party is not adhering to a ruling from the Labour Court or Industrial Tribunal, such behaviour is considered a breach of the prerequisites of the collective agreement, and the party can be sued again at the Labour Court and fined anew; this time with a heavier fine, cf. section 12(7).

Penalties are payable to the party to the collective bargained agreement, i.e. the trade union or the employer association. Trade union members, who e.g. have received to little pay will then receive compensation from the trade union.

The collective mechanisms to enforce collectively bargained conditions of work are available to all categories of NSW covered by the agreement. It is the duty of the trade unions to ensure effective enforcement of the collective bargained agreements, meaning that any breach must be pursued regardless of who is the victim of the breach. This is the case regardless of the unionisation status of the employee, as the breach in itself is the core of the claim.

2.8.1 Category 1

For employees working on non-standard working terms, the access to enforcement in the industrial system is equal to members of the trade unions working on standard terms.

Temporary agency workers may be subject to derogating collective agreements. However, this does not change their access to enforcement for breach of terms in the relevant collective agreement. Cases for breach of agreement for temporary agency workers, are regularly submitted by the trade unions and heard by the industrial courts.

2.8.2 Category 2

Persons with an unclear status performing work at a workplace covered by a collective bargained agreement, can use the industrial dispute system like standard workers.

If their status as employees, and thus covered by the collective bargained agreement, is disputed, then submitting a claim for rights in the applicable collective agreement can be an avenue to have the status resolved.

2.8.3 Category 3

As self-employed do not have rights under collectively bargained agreements, they would not per se have any claims for lack of adherence to collective agreements.

2.9 Other types of agreements

In Denmark, there are no other types of collective agreements.

Price lists for services offered by solo-self-employed in a traditional sense, e.g. dentists or photographers, can be published by the relevant trade union. This can however be with an informative purpose only, there is no duty for the members to follow the list in

their individual bargaining for tasks/prices, and no duty for the counterpart to respect the list prices. This would be in breach of competition law.

2.10 Obstacles and facilitators for access for non-standard workers to effective collective bargaining

Facilitators are in my view the large self-determination left to the social partners. The system adopts quickly to new developments in society as well as needs of workers.

The cases from the late 1990s to mid-2000s illustrate an involvement to ensure good working conditions also for workers, who perform services as freelancers and not as traditional workers. The same is the case for the trade union for salaried employees, HK, that supports members who are starting as self-employed lifestyle.

On the other hand, the self-regulating and self-determining system rests on the voice of the trade unions themselves, and thus their members. The Legal framework depends on political choices of the segment in the labour market that are the members. In more traditional industries, such as the skilled or unskilled work, we have not seen the same pursuit of negotiating for NSW with unclear status/self-employed. These trade unions instead focus on strengthening the collective bargained agreement itself, by facilitate provisions in the collective bargained agreement that counteract circumvention. The purpose is to strengthen the application and compliance with the agreement, not necessarily to protect the NSW with unclear status/self-employed.

Another perhaps weak element in this self-regulatory system is that it is based almost entirely on negotiations. This means, that topics – such as e.g. more generally allowing bargaining on behalf of false or solo self-employed – needs agreement from both sides of the bargaining table. If one party does not accede, the bargaining will not go forward on this topic. No will be no – and as the bargaining architecture is – the other party will assess how expensive (in negotiating terms) pursuing this topic will be. This is a weakness – in theory, and perhaps also in practice for the NSW.

A strong element is, that the workforce is becoming more diverse, also in Denmark. Diversity is seen also in the membership in trade unions, and the largest trade union for skilled and unskilled labour, 3F, they have made a statement to the fact, that they want to actively pursue a diverse representation in the influential political positions in 3Fs organisation structure. This indicates awareness that the labour market and the workforce is no longer homogenous, and this means opening up also for persons performing work in non-standard contracts.

The pursuit of counteracting the circumvention of binding collective bargained agreement with solo-self-employed is very clear in the building, logistics industries, where the trade unions are very active in submitting claims on behalf of their members.

The self-regulated system for bargaining allows for as much bargaining power to the trade unions, as they can get from memberships.

In my view, the largest blockage that has not yet been solved concerning bargaining for new forms of self-employed – the solo-self-employed who are genuinely self-employed but still economically dependent on one principal – is the non-alignment between the

competition authorities and the social partners. The Competition authorities hold a very strict approach and are apparently not adjusting their approach to the new circumstances with solo self-employed, and are not using the new guidelines of the EU Commission allowing collective bargaining for groups of self-employed of various characteristics. This strict approach is supported by the employers' side, who upholds the traditional strong and solid wall between employees and self-employed. The employer associations may not have the mandate from their members, the undertakings, to bargain binding collective agreements on their behalf, if the binding agreements cover self-employed where the undertakings are used to have full freedom of contract.

Despite the flexible and self-regulating legal framework, the binary divide is a strong and traditional feature of this self-regulating legal framework. As such, the self-regulating framework could also in itself be an obstacle to access for persons performing work as self-employed, in particular the hybrid lifestyle and the assessment contract per contract also for genuinely self-employed persons running a business, has not yet broken through thoroughly in the rulings, assessing which employees are covered as freelancers, and which are not.

3 Information and consultation rights

3.1 The legal framework for information and consultation

The collective right of information and consultation is primarily found in Main Agreements at confederation level. The right to information, consultation and co-determination has from early on been an integrated part of the collective bargaining system, and has not been established in the Constitution or in legislation. The two original forms of collective collaboration at company level are shop stewards (*tillidsrepræsentanter*) and cooperation committees (*samarbejdsudvalg*). Both systems are central to the cooperation at shop level.

In addition, supplementing systems for cooperation by way of information and consultation, which apply also to companies without a collective agreement, have been established in legislation.

First, since the 1950's legislation established a framework for the function of health and safety representatives – a system separate from but similar to that of shop stewards in the collective agreements. In the 1970s the representatives were supplemented with a system of health and safety committees, modelled on the system for cooperation committees in the collective agreements. It is possible at shop level to combine the two co-operation organs. The Danish rules on health and safety in the Work Environment Act now also transpose the rules in the EU Framework Directive on Health and Safety, Directive 89/391/EC. The health and safety system for information and consultation will not be further pursued in this report.

Second, employees have the option to elect board members as established in the Danish Companies' Act. This is a right that can be activated by the employees. The right to co-determination in company boards by way of elected employee representatives to the boards, are not pursued further in this report.

Third, at European level, duties on information and consultation of employees in several specific situations have been established, including in transfer of undertakings, in collective redundancies, for European Works Councils and for certain border-crossing entities. These information and consultation duties will not be pursued in this report.

Fourth, at European level, a general duty to inform and consult employees in an ongoing business is expressed in the EU Charter of fundamental rights article 27, and in Directive 2002/14/EC on information and consultation of employees (Directive 2002/14). In Denmark, Directive 2002/14 is transposed in the Statutory act on information and consultation of employees, which applies to undertakings with at least 35 employees. The Act applies to companies, who are not covered by a collective agreement with information and consultation duties at least reflecting those enshrined in Directive 2002/14). This information and consultation duty thus interacts with and supplements the existing systems of shop stewards and cooperation committees in the Danish collective agreements, and will be further elaborated on below.

3.2 Shop stewards

The role and function of shop stewards at company level are a central and essential part of the collective bargaining system.

The legal framework is established in collective agreements. Since the year 1900 this has been part of the collective bargaining system in the private sector, and later this spread into also the public sector. The system of shop stewards, their function, and their protection, is thus strongly protected, and any questions of breach are pursued in the strong industrial dispute resolution system.

As an example, for the strong protection of shop stewards and the duty of the employer to cooperate also with non-standard shop stewards (in case a Romanian employee) is the Industrial Dismissal Board ruling of 21 November 2022.¹⁰⁰ The employer, a Danish subsidy to an Italian construction company, was fined for three instances of breach of the Industrial Agreement. First, for dismissing four elected shop stewards immediately after their elections. This resulted in the reinstatement of the dismissed shop steward and a fine to be paid to the trade union. Second, for harassment and discrimination of trade union members employed at the subsidy. This resulted in a payment of fines for breach of agreement, an order for the working conditions to be normalised, and an order to cease the discrimination of union-members. Third, concerning a dismissal of a union-member for a seemingly small mishap (smoking in non-smoking areas) the industrial board concluded, that the dismissal was a violation of his freedom of association. The system proved strong and protective also for employees who are in a vulnerable situation, in case foreign employees working in Denmark. The Danish subsidy was a member of Danish Industries (Dansk Industry), and the Romanian employees had joined the Danish trade union 3F. The members exercised their rights under the collective agreements, and the trade union strongly and vehemently supported their rights on an equal footing with Danish members.¹⁰¹

The collective agreements provide the framework for election of shop stewards among the employees at the undertaking. The shop steward is the trade union's presence at shop level – and as such, it is a right for the trade union and the trade union members within the framework of collective agreements. It is not a general right of all employees to elect a shop steward or employee representative with the special protections in the collective agreement. An elected employee representative outside the collective agreement system does not enjoy any special protection against dismissal, and does not have a right to engage with the employer – except in situations covered by the Act on Information and Consultation (below 3.3.)

The DA/FH Main Agreement now establishes in section 4 that the managerial prerogative is exercised in cooperation with the shop stewards according to the agreements between the DA and the FH. Further in section 4, that questions about unfair dismissals are negotiated locally between the shop steward and the employer first before moving on to negotiations at association level. In section 8 a procedural dismissal protection of

¹⁰⁰ Ruling of the Industrial Dismissal Board of 21. November 2022, case no 22920351, available at <https://arbejdsretten.dk/media/21772/anonymiseret-afskedigelsesnaevnets-kendelse-i-sag-nr-20220351.pdf>

¹⁰¹ The case is further elaborated in International Labour Law Reports (ILLR) 43/2025.

shop stewards is introduced. Dismissals of a shop steward cannot be carried out before the grounds have been assessed by the trade union, and shop stewards have a prolonged notice period in addition to their individual notice period in case of dismissal. Furthermore, in section 8, a shop steward has a strong substantive protection against dismissals, at least compared to the general Danish weak protection against dismissals. In essence, dismissal of a shop steward requires 'compelling reasons' – either in the shop stewards own conduct or for reasons related to the company.

The shop steward is the local extended hand of the trade union. As such, the shop steward controls adherence to the collective bargained agreement, negotiates directly with the employer about supplementing questions, which can lead to binding local collective agreements, as well as must on the other hand ensure, that the workers follow the duty of peace – by actively counteracting unlawful work stoppages and strikes. In step with increasingly decentralised negotiations in certain sectors, the shop steward obtains increasing influence and role in negotiating pay and working conditions at shop level.

Shop stewards control the correct use of the collective agreement for all employees, that are entitled under the collective agreement – regardless of their unionisation status. The purpose is to ensure, that the employer follows the agreement correctly.

The employer often has specific duties to inform and involve the shop steward about matters relating to the employees in the relevant section or unit, e.g. new recruitments, or the number of parttime workers, the number of temporary agency workers, extension of fixed-term contracts.¹⁰²

Election of shop stewards follow the rules in the sector agreements, and is a right of the employees, which they can choose to activate.

The most common minimum number of employees is 5 persons employed within the relevant type of work (the area covered by the collective agreement). It is the number of employees, that is decisive, not the number of unionised employees.¹⁰³ In some collective agreements, each department or unit may elect a shop steward, who then elects a convening shop steward (*fællestillidsrepræsentant*).

To be eligible for election, the person must be a member of the trade union (as the extension of the trade union at shop level), and must currently be employed at the company in the relevant department or section. Often, it is a requirement that the person must have a certain seniority, and is a 'respected and competent' (*anerkendt og dygtig*) employee. This is not to set barriers for election, but to ensure, that the elected person is sufficiently qualified for the functions.

The employees elect the shop steward. It is often explained specifically in the collective agreement, who can vote in the elections. This is often the employees in the affected

¹⁰² E.g. the collective agreement for journalists (Overenskomsten mellem Dansk Erhverv Arbejdsgiver for Danske Mediers Arbejdsgiverforening (DMA) for JP/Politikens Hus A/S og Dansk Journalistforbund (DJ) - Medier og Kommunikation for Politikens og Ekstra Bladets medarbejderforeninger) section 2 on fixed-term, on-call temporary workers, and freelancers, cf. industrial Arbitration Ruling FV 2023.1221 of 11 March 2024.

¹⁰³ J. Kristiansen, Den Kollektive Arbejdsret, 2021, s. 405.

company, section or unit. Unless expressly established otherwise, all affected employees may vote – also the non-unionised employees. This is considered ‘a well-established labour law rule’ that has been followed ‘in generations’.¹⁰⁴

The procedures for elections are often not described in the collective agreements. The election procedures are conducted by the trade unions, who must nonetheless follow certain general principles, i.e. that all eligible for voting are informed of the election and have the opportunity to propose candidates, and that the ballots are secret if just one of the eligible for voting requests this.¹⁰⁵ Often, it is expressly stated, that the elected shop steward must enjoy the support of at least 50% of the group of employees.

After the election the elected shop steward must be approved by the trade union. This is because the shop stewards’ functions as the connection between the trade union, the employees, and the management. The elected shop steward is not only the elected representative of the colleagues, but are also an integrated part of the organisational structure, e.g. the shop steward is authorised to conclude binding local agreements with management. It is a precondition, that the elected shop steward is a member of the relevant trade union. This has also been confirmed in industrial caselaw.¹⁰⁶

The employer has no influence on who is elected, elections are purely a matter for the employees. The employer is not allowed to interfere or influence the elections, this could be fined as anti-union behaviour. The interest of the employer in ensuring that the elected shop steward enjoys support among her or his peers can be pursued only by way of the legal framework for elections in the collective agreement. The employer may give a complaint to the trade union, if formalities are not followed, e.g. elections are carried out in secret, if certain requirements are not met, e.g. a certain seniority for the elected shop steward, if the required number of employees is not fulfilled, or if the elected shop steward is not suitable for the cooperative role, perhaps based on former serious conflicts.

3.2.1 Category 1: Non-standard working conditions

Persons in category 1 have access to the system of shop stewards.

Employees on atypical employment contracts can as a rule be elected as shop stewards, regardless of e.g. the time-limited character of the contract. In Industrial arbitration ruling of 27 December 2016,¹⁰⁷ a temporary agency worker was elected as shop steward in the temporary work agency, and was protected against dismissal unless there were compelling grounds, even if his contract with a user entity expired.

All employees have voting rights, there are no indication, that voting rights are reserved for those on ‘typical’ contracts, the purpose is that the elected shop steward enjoys the support of their peers, they are going to represent towards the employer.

¹⁰⁴ Industrial Arbitration Ruling of 4 July 1984 between SID and General Directorate for Post and Telegraph Authority.

¹⁰⁵ J. Kristiansen, *Den Kollektive Arbejdsret*, 2021, s. 408.

¹⁰⁶ Industrial Arbitration Ruling of 22 November 1979, cf. J. Kristiansen, *Den Kollektive Arbejdsret*, s. 408.

¹⁰⁷ FV 2016.92 Industrial Arbitration Ruling of 27 December 2016, case no 2016.0092.

The employer often has a duty to inform about employment of workers on non-standard terms, with a view to enable the shop steward to pursue any questions of abuse of, unequal treatment of, or attempts to circumvent the collective agreement by using non-standard workers.

The shop steward must ensure, that the collective agreement is followed by the employer, also on behalf of workers in non-standard contracts – if they are eligible for rights under the collective agreements. This includes providing information, hearing the points of views, negotiating on behalf of all employees, concluding agreements on behalf of all employees.

The extent of the involvement of workers in category 1 hinges on the provisions in the collective agreements and on the negotiating power of the elected shop steward.

However, as the starting point is, that employees on non-standard contract terms are treated equally as others with a view to counteract circumvention of the agreement, this means, that barriers for access as a rule must be explicitly stated in the agreement.

It is a strength, that barriers must be negotiated expressly. At the same time, it is a weakness, because the protection depends on the freedom of contract, and as such, it is possible from a technical legal point of view, that the parties negotiate lack of access for persons on non-standard contracts.

Concerning the role of the individual shop steward, the collective agreement sets the boundaries for the freedom of contract to conclude local agreements.

3.2.2 Category 2: Unclear status

In connection with pursuit of rights under the collective agreements, e.g. to vote for or run as a candidate in shop steward elections, persons with an unclear employment status may have the opportunity to have their status classified.

There is no special category in relation to elections, the role and function of shop stewards.

3.2.3 Category 3: Genuinely self-employed

The genuinely self-employed are outside the system of shop steward representation. Shop stewards are the extension of the trade union, and they control, negotiate and cooperate with the employer on behalf of the employees in the relevant department or unit.

As self-employed persons do not have access to collective bargaining, they also do not have access to representation by a shop steward.

Naturally, self-employed persons may elect a person among themselves to represent their interests towards the main contractor. The elected representative does not enjoy any protections, and if the main contractor does not wish to cooperate with an elected representative, there is no duty to do so, as they are self-employed.

3.3 The Cooperation committees and information and consultation

The continuous dialogue at shop level between representatives of management and representatives for the employees on business matters also has its main legal basis in collective agreements.

3.3.1 Cooperation Agreements

The purpose of Cooperation Committees (*samarbejdsudvalg*) is to enable cooperation and dialogue at shop level and is slightly different to the more classical works councils in other countries. The focus is on – indeed – cooperation and less on control and negotiation, as this role and function was already looked after in the shop steward system.

The first agreement between DA and (then) LO was concluded in 1947, establishing this new format for employee influence in matters concerning management of the workplace did not gain much influence in practice, as the Cooperation Committees did not have specific tasks or mandates. A new Cooperation Agreement was concluded in 1970 after the 1960s discourse on democracy at the workplace. More tasks and mandates were delegated to the Cooperation Committee, and this agreement continues to be the basis for the current DA/FH Cooperation Agreement from 1986.¹⁰⁸

The joint objectives of the DA/FH Cooperation Agreement are development, increased efficiency, globalisation, and the use of new technology, which are considered 'vital to competitiveness, employment, the working environment and job satisfaction'. It is underlined, that 'systematic cooperation' at all levels is a means to achieve this.¹⁰⁹

A duty of shop level cooperation applies to all enterprises, with special obligations for large enterprises of more than 35 employees. All enterprises have a duty of day-to-day cooperation based on interaction between management and employees and shop stewards.

Therefore management, cooperation and communication methods should be devised with a view to inducing as many employees as possible to play an active part in the planning and organisation of the work. In this way, the employees can be made to contribute to the development of the enterprise through their knowledge, insight and experience as well as to the expedient and efficient day-to-day operation of the individual sections of the enterprise.

[...] This implies that viewpoints, ideas and suggestions must be made known in time for inclusion into the decision-making process.¹¹⁰

For larger enterprises with 35 employees or more, the cooperation must be organised via a cooperation committee with representatives of management and employees.¹¹¹ Derogations can be agreed to locally, as long as the obligations of the agreement are

¹⁰⁸ Cooperation Agreement between FH and DA with changes of 1986 and 2006, supplementing agreements on non-discrimination and integration, on telework, and on managers - https://samarbejdsnaevnet.dk/me-dia/dapko24n/the_cooperation_agreement.pdf Similar agreements have been concluded in the public sector.

¹⁰⁹ FH/DA Cooperation Agreement p. 5.

¹¹⁰ FH/DA Cooperation Agreement p. 5-6.

¹¹¹ FH/DA Cooperation Agreement p. 7.

achieved 'including the coverage of all employees by the work undertaken by the cooperation committee.'

Information should be given to individual employees as well as to groups of employees. Information should be given in time for viewpoints, ideas and suggestions from employees to be included in the decision-making process. The information provided shall be communicated in a clear and understandable form, and should be adapted to the groups of employees for whom is intended.

Enterprises of more than 35 employees must ensure continuous information to the cooperation committees about the affairs and development of the enterprises, and at least about the following matters:¹¹²

- its financial position and future prospects, including the volume of orders and market conditions as well as factors affecting production;
- employment prospects;
- major changes and any proposed restructuring, e.g. the use of new technology in production and administration, including the introduction of computer aided technology and systems.

Employee representatives also have a duty to keep the committee informed of matters relating to the workplace, which are of relevance to the climate of cooperation, but not information about personal affairs.

Members of the Cooperation Committee must keep all employees informed about the work of the committee, including decisions taken. Similarly, the members of the cooperation committee are responsible for including viewpoints, ideas and proposals from all employees in the work undertaken by the cooperation committee. Finally, individual employees must give information to their superior of any matter at the workplace relating to their own job situation, such as technical, training or environmental aspects of relevance to the individual employee.

The cooperation committee has the following duties:¹¹³

1. Establishing principles for the local working and welfare conditions, as well as principles for the personnel policy pursued by the enterprise towards the employees represented in group B on the cooperation committee;
2. Establishing principles for training and retraining employees who are to use new technology;
3. Establishing principles for in-company collection, storage and use of personal data;
4. Establishing principles for a training policy in the company in general;

¹¹² FH/DA Cooperation Agreement p. 7.

¹¹³ FH/DA Cooperation Agreement p. 9-10.

5. Exchanging viewpoints and considering proposals for guidelines on the planning of production and work and the implementation of major changes in the enterprise;
6. Assessing the technical, financial, staffing, training and environmental consequences of the introduction of new technology or changes in existing technology, including computer-aided technology and systems, where such introduction or change is extensive;
7. Establishing principles on a senior policy for the company;
8. Informing employees of proposals for incentive pay schemes, including particulars of their basic structure, effects and application, and informing them of the possibility of setting up funds for educational and social security purposes;
9. Establishing principles on non-discrimination and integration in accordance with the supplementary agreement thereon concluded between LO and DA.

The committee is not entitled to deal with the conclusion, extension, termination, interpretation or adaptation of collective agreements or local wage agreements, which are resolved by the industrial dispute resolution procedures.

Cooperation committees must ensure communication 'to all employees' about the work of the cooperation committees, subcommittees, etc. This may be by way of minutes, newsletters, notices, information meetings, information groups, etc.¹¹⁴

In enterprises employing more than 35 persons in the same geographical area cooperation committees are established if the employer or a majority of the employees wishes so. The number of employees comprise all employees, 'including apprentices and youth workers'.¹¹⁵

Cooperation committees are established with full parity, with the number of members corresponding to the size of the company.

Number of representatives:		
In enterprises with	Group A	Group B
35-50 employees	2	2
51-100 employees	3	3
101-200 employees	4	4
201-500 employees	5	5
More than 500 employees	6	6

Source: The FH/DA cooperation agreement, p. 16.

The parties are instructed in the agreement to ensure representation:¹¹⁶

¹¹⁴ FH/DA Cooperation Agreement p. 12.

¹¹⁵ FH/DA Cooperation Agreement p. 15.

¹¹⁶ FH/DA Cooperation Agreement p. 16.

When electing representatives and alternates to serve on the cooperation committee it should be endeavoured to ensure that the members are as representative as possible in terms of staff groups, sections and professional qualifications.

Elections among employees are prescribed to be representative of all employees:¹¹⁷

Representatives of group B shall be elected by and among the other employees provided always that shop stewards elected in pursuance of collective agreements shall be ex officio members of the committee.

[...] Where the number of representatives required to be elected for group B exceeds the number of shop stewards, the relevant number of representatives will be elected from among the other employees. Eligibility is subject to the same conditions as for shop stewards.

To ensure adequate representation the employees have a right to elect additional representatives for groups, that are not already represented by the shop stewards or other elected representatives. This concerns occupational groups or groups with specific training.¹¹⁸

The chairman of the cooperation committee is a representative from management, the deputy chairman is elected among the representatives of the employees. If the employees have elected a convening shop steward (*fællestillidsmand*), this person will be the deputy chairman of the cooperation committee.

Procedural dismissal protection is extended to elected employee representatives, who are not already shop stewards. This includes an additional 6 weeks' notice over and above the period of notice otherwise provided for.

In order to support the cooperation work at shop level, the DA and FH have set up a Cooperation Board.¹¹⁹ The Cooperation Board plays a strong and visible role to support cooperation and dialogue at shop level, including by producing materials and sending out consultants.¹²⁰ The Cooperation Board consists of 7 representatives from each side, and assists with information, guidance and development to promote cooperation in enterprises, establishment of cooperating committees, guidance for cooperation committee activities, as well as a forum for resolution of disputes.

Disputes concerning the cooperation agreement¹²¹ are solved preferably by way of dialogue and local negotiations. If this does not resolve the dispute, either party may bring the case before the Cooperation Board, which will endeavour to achieve an amicable settlement between the parties involved, their respective trade unions and the employers' association.

¹¹⁷ FH/DA Cooperation Agreement p. 17.

¹¹⁸ FH/DA Cooperation Agreement p. 17.

¹¹⁹ FH/DA Cooperation Agreement p. 20.

¹²⁰ The Cooperation Board website with information: <https://samarbejdsnaevnet.dk/>

¹²¹ FH/DA Cooperation Agreement p. 22.

If settlement is not reached, and arbitrator may be appointed to assist the Cooperation Board. The dispute will then be settled by an arbitrator according to the Act on a Labour Court.¹²²

3.3.2 The Act on information and consultation

The EU Directive 2002/14 on Information and Consultation was transposed into Danish law in 2005 by the Act on Information and Consultation.¹²³

The Information and Consultation Act is a supplement to the existing Cooperation Agreements. The legislators and social partners aimed to preserve the existing format for information and consultation at entities in the private and public sector in Denmark. The minimum threshold for the duty to consult and inform employees in the act was set to correspond with the existing threshold in the collective agreements on cooperation committees.¹²⁴

The act applies to companies with at least 35 employees, cf. section 2. All employees are counted, regardless of their employments rate (hours).

The act is semi-dispositive, meaning, that it does not apply if a collective agreement stipulates a duty for the employer to inform and consult the employees, which as a minimum correspond to the rules in the appendix 1 of Directive 2002/14, cf. section 3 of the Act.

The content of the Act to a large degree corresponds with the existing rules in the Cooperation Agreements.

Adequate information must be given about matters of significance for the employees, cf. section 4, as a minimum:

- a) Information on the recent and probable development of the undertaking's or the establishment's activities and economic situation, including on matters concerning orders, the market, and the production;
- b) information about the employment situation in the establishment, including if the employment is threatened, as well as plans for major changes and measures, that may affect the employment;
- c) information on company decisions, which may lead to substantial changes in work organisation or employment.

The employee representatives must be given an opportunity to exchange viewpoints and establish a dialogue with management on the basis of the information received. The employee representatives must have the opportunity to give a statement, prepare and have a meeting with management, and receive a reasoned answer from management to

¹²² FH/DA Cooperation Agreement p. 22.

¹²³ Statutory Act on information and consultation of employees, act no 303 of 2 May 2005 with later amendments.

¹²⁴ Preparatory works, proposal for the act on information and consultation of employees, proposal no 17 of 23 february 2005, General remarks, Relationship with EU law.

any statements given. The information and consultation procedure is with the aim of reaching an agreement but does not affect the managerial prerogative.

Employee representatives are the ordinary representatives of the employees. If employees have not elected ordinary representatives, all employees may elect representatives for the purpose of information and consultation with management.

Enforcement of breach of the duties under the Act on Information and Consultation is a criminal penalty, cf. section 9 (2). The preparatory works explain that this choice is because the right to information and consultation is not an individual right, and thus a penalty is more appropriate sanction than individual compensation.¹²⁵

3.3.3 Category 1: Non-standard working conditions

Employees in companies, that are covered by a collective agreement, are covered by the DA/FH Cooperation Agreement. Employees working on contracts with non-standard working conditions are fully included in the cooperation agreements concluded by the DA and FH (and similarly in public entities). The cooperation agreement obliges any enterprise of any size to inform and consult the employees in an adequate manner.

For larger companies of more than 35 employees, cooperation agreements contain a duty to establish a forum for ongoing dialogue and conversation with employees' representatives representing all employees at the undertaking. It is consistently mentioned in the wording, that the representatives must represent all employees.

A special mechanism is introduced to ensure, that (occupational) groups of employees, who are not represented in the cooperation committee, can appoint a representative. This results in an additional member for the employee side and an additional member from the employer side.

As non-standard employees can vote for and run for position as shop steward, and as shop stewards are born members of the cooperation committees, this inclusive approach to shop stewards spills over into the cooperation committees.

Employees in all public sectors (State, Regions and Municipalities) are covered by similar Cooperation Agreements.

Employees in private sector companies, that are not covered by a collective agreement, derive their collective rights from the Act on Information and Consultation. The duty to inform and consult the employees through employee representatives apply only to larger companies of more than 35 employees. All types of employees count towards the threshold. There are no further rules on who can vote or who can be elected as representatives, this is aimed to reflect the existing rules in the collective agreements.

The right to information and consultation derived from the Act on Information and Consultation is not very strong, as the sanction is a criminal penalty, not an individual compensation for e.g. non-representation of certain groups of employees.

¹²⁵ Preparatory Works, Proposal 17, comments to § 9.

3.3.4 Category 2: Unclear status

For persons with unclear status, the rules do not include special categories, special rights or indeed special procedures.

This means, that persons that perform work and has an unclear status as employees, may have their status clarified in connection with elections to cooperation committees, cf. the Cooperation Agreement, or in connection with elections as employee representatives, cf. the Act in Information and Consultation.

3.3.5 Category 3: Genuinely self-employed

For the genuinely self-employed, both systems for information and consultation are unavailable.

The systems aim to establish dialogue between management and representatives of employees. Employees are defined in the classical manner in the Act on Information and Consultation, as persons receiving remuneration for personal work in an employment relationship.¹²⁶

Although some topics may be of similar interest to persons offering services as genuinely self-employed, e.g. the company's economic outlook, they are not mentioned in the wording of the Cooperation Agreement and the Act on Information and Consultation, and not in the preparatory works to the Act.

This group is entirely outside the system for information and consultation at shop level

3.4 Enforcement

Overall, the question of enforcement has been dealt with above under the specific questions. The enforcement systems in Denmark for questions relating to the labour market are overall quite diverse and specialised, with the ordinary court system being the fall-back justice system available to everyone.

Not many cases are heard in the ordinary courts for breach of collective bargaining rights. This matter is entirely within the executive competencies of the industrial courts, which has the specialised knowledge and regularly hears and assesses questions concerning collective bargaining, anti-union behaviour.

There are very few rulings in any system for employee involvement at shop level. The Cooperation Board acts as a support system for the local efforts on cooperation. Lack of cooperation by way of not giving adequate or timely information to the employee representatives have been the subject of assessment by the Cooperation Board a few times since the binding rules came into place in 1970 and updated in 1986. E.g. on the correct timing of giving information.¹²⁷ Breach of the duty to give adequate and timely information can be sanctioned with a (private) penalty, set at the discretion of the court.

¹²⁶ Preparatory works, comment to § 2.

¹²⁷ E.g. Ruling of 19 April 1990 between LO and DA about a decision to close several departments resulting in staff reductions, and a ruling of 6 September 2001 between LO and DA about a planned fusion, where the umpire stated that management has a clear duty to on beforehand inform the cooperation committee about the transfer.

The same is the case for complaints about management deciding to withhold information because it is confidential, which are heard by the umpire assisting the Cooperation Board. If information is withheld, that does not fulfil the criteria, the employer is found to be in breach of agreement, and will pay a (private) penalty, set at the discretion of the court.¹²⁸

The remedies are strong in the industrial system, and very weak in the statutory system.

In the industrial system a penalty or fine can be awarded by the Labour Court (and sometimes by Industrial Arbitration) for breach of agreement. Breaches of agreement are also breaches of the unwritten principles as well as breaches of the procedures or duties for dialogue and cooperation. Penalties are set at the discretion of the umpire/judge, cf. the Labour Court Act section 12, taking into consideration any exacerbating or mitigating circumstances, the graveness of the breach, and the size of the company.

Penalties are paid to the party to the collective agreement. It is a (private) penalty for breach of agreement, not a criminal or administrative penalty. As the penalty is awarded for the breach of the agreement of one party (or their member), the penalty is paid to the other party to the collective agreement.

The penalty is not paid to the individual workers, nor to the shop stewards or cooperation committee members. It is the trade union or employer association, that is party to the agreement, and as such, it is their agreement which has not been followed.

In all industrial claims, the judge or umpire will state who should bear the costs of the procedure. The costs are set at the discretion of the judges/umpires, and varies according to the size of the claim and the complexity of the question.

3.5 Obstacles and facilitators for access for non-standard workers to information and consultation rights at shop level

The system for collective rights at shop level is primarily built on negotiated agreements at main level, and has been in use for more than a century. This has advantages as well as disadvantages. First, the system is intended to be inclusive and encompassing all employees. The stronger the voice of the and of all employees, the stronger the system of information and consultation at shop level is.

For employees performing work in non-standard working terms, they are already entitled to participate as shop stewards, vote in shop steward elections, regardless of contract type. A temporary agency worker, who was elected shop steward in the user undertaking, was protected against dismissal on the same terms as other shop stewards. The employer must inform shop stewards of the employment of staff on non-standard terms giving them voice via the shop steward from before they are employed. The actual extent of this involvement depends on the specific provisions of the collective agreement and on the bargaining power of the individual shop steward. The starting

¹²⁸ E.g. Ruling of 28 april 2003 between LO and SALA (Slaughterhouses employer association) where information about a fusion was withheld because of the potential damaging effect. The umpire found, that withholding the information also after the period in time, where the damaging effect could take place, was a breach of agreement, and the company was fined.

point is equal treatment, so any exclusion of non-standard workers must be expressly negotiated.

For employees on non-standard working terms, they are also intended to be fully included in the wording of the Cooperation Agreement as part of 'all employees' which is repeatedly stated as a quality criterion of the cooperation system.

Enforcement is as strong as the rest of the dialogue and negotiation based collective bargaining system, the parties have established a cooperation board with guidance duties – aiming to support the cooperation at shop level. Cooperation at shop level is not improved by strong and harsh controls, but is enforced and strengthened by education and guiding. IN case, all goes wrong, an umpire may hear specific complaints. The ideology of cooperation is however best supported by agreeing on the advantages of consultation for both the company and the employees.

It is notable that for companies without a collective agreement, their duty to engage in information and consultation of employees is found in legislation: The framework is weaker and with a much weaker enforcement system. IN reality unenforceable by the employees at the undertaking, as criminal charges are brought by outside supervision by the police.

For persons in category 2 with an unclear status, the overall approach is to determine the correct status so they can be participating as employees or be outside as self-employed. If the status of a person is disputed, this status must be resolved, in case the person wants to vote for or be elected as shop steward. This is incidental, not a designed route to resolving status. The same is the case in relation to cooperation procedures, neither the Cooperation Agreement nor the Act on Information and Consultation contains special rules, rights, or procedures for this group. Status may again be clarified incidentally, in connection with elections to the cooperation committee or as an employee representative, but there is no dedicated mechanism.

For genuinely self-employed in category 3 this group is entirely outside of the system for electing shop stewards. As this group has no access to collective bargaining and are not covered by collective bargained agreement, they have no access to elect shop stewards to control the collective agreement application, nor to act on their behalf. A group of solo-self-employed may informally elect someone to represent their interests towards a principal, but that elected representative has no protection, and the principal is under no duty to engage with them. The same is the case for both the Cooperation Agreement and the Act on Information and Consultation, which are closed for solo-self-employed. Both instruments define their scope around "employees," and neither the wording nor the preparatory work address the self-employed, even though some matters, such as the economic outlook of the undertaking, could plausibly be of interest to someone working continuously for it.

Overall, the systems of collective rights at shop level are built on the same traditional binary divide as the system of access to collective bargaining. The inclusion of employees performing work on non-standard working terms is intentionally broad so as to ensure – at the moment – the strongest possible voice towards the employer, as well as for

the employer to ensure, that negotiations that take place in the cooperation committee are indeed representing the interests of all the employees – so as to protect against later surprises and blind corners. This is underlined also by the right of special groups not otherwise represented to elect additional representatives.

A second overall point is that the system – being built on strong and old principles of cooperation – treats cooperation at shop level as a clear advantage to both the company and the employees. This also affects the enforcement system in place, that is built on more dialogue, more information and guidance, and less harsh control and sanctioning of the wrongdoers at shop level. Building a culture of cooperation nonetheless requires strong enforcement, and in the end an umpire can resolve disputes.

A third overall point is the difference in enforcement systems between the industrial relations based system and the legislative based system. The industrial relations based system is very strong, with full procedural backup for shop steward system ending in breach of agreement and penalties and with a specialized board for the cooperation at shop level and ending in umpire rulings. In this system, category 1 employees and category 2 persons with an unclear status who are 'false' self-employed and who are members of a trade union, would have strong access as well as a grievance procedure when not allowed to participate. Whereas the protection of information and consultation duties at shop level based on legislation is very weak for the individual atypical worker/employee in all categories.

For persons in category 2, clarifying their status as employed or 'false' self-employed would be a side-effect of claiming participation in the collective systems at shop level, and the enforcement systems would be strong to pursue these clarifications.

A fifth and perhaps most interesting point is, the downside of this traditional approach is, that solo-self-employed that are genuinely running a business do not have access to the system – regardless that they may have an interest in participating as their pay and work terms may be affected by management decisions. The traditional binary divide effectively keeps out also new forms of self-employed, including perhaps the hybrid life-style choices. Both systems are old constructions, built by strong social partners for a comparatively homogeneous labour market of full-time, open-ended employees. The Cooperation Agreement dates from 1947 and 1970, the Act is from 2005 but builds on the existing system, and neither has been substantially reworked to address a more diverse workforce. This is at once a strength and a weakness. The strength is that the system rests on established, well-functioning institutions with real authority behind them: strong social partners, a working Cooperation Board, and decades of practice. The weakness is that the categories it uses, "employees" and "all employees," reflect that original, more homogeneous setting rather than the current composition of the labour market, and the system has not been adapted to say anything specific about the groups that now depart from it.

More generally, neither system takes a clear position on newer and more fragmented forms of work. The wording is built around these older categories without addressing how workers on fragmented, on-call, or platform-based contracts fit into them for the

purpose of information and consultation. This leaves the position of these groups unclear, rather than settled either way.

4 Overall conclusions

The Danish system for both collective bargaining and information and consultation rests on old, self-regulating institutions, built by strong social partners for a labour market of full-time, open-ended employees. This age is part of its strength, but it also means the system was never designed with today's more international, digital, and fragmented working lives in mind, and it has not been substantially reworked to address them. Access for non-standard workers therefore depends less on a general legal standards, and more on how far the existing institutions, and the will of the social partners, can stretch to cover new situations – policy rather than legal barriers.

This is not a purely theoretical concern. FH itself has named new and atypical forms of employment, including platform-related work with unclear employment status, as a priority area, alongside its stated aim of reversing membership decline.¹²⁹ Individual trade unions, including 3F, HK and DM, have in recent years developed new services specifically aimed at freelancers, platform workers, and others on the edge of the traditional labour market.¹³⁰ This suggests a shift in orientation, from treating non-standard work mainly as something to be absorbed back into standard contracts, towards accepting that non-standard contracts are here to stay and trying to secure quality and access within them. I found clear evidence of the second half of this shift; I did not find an equally explicit statement of the first, earlier strategy, so this should be treated as an inference rather than a documented policy change, unless you have a source for the earlier position.

At the same time, this engagement is happening against a backdrop of continued institutional weakening.¹³¹ Union density in Denmark has been falling for more than two decades. Although the latest numbers show a small increase in unionisation,¹³² only around 50% of employees are organised in a trade union in one of the three main confederations. This directly narrows the base from which any extension to non-standard workers would have to come. It is also worth noting, as already established in this report, that the largest single trade union in Denmark today, Det Faglige Hus, sits outside the collective bargaining architecture altogether: it has no collective bargained agreements of its own, no signatory status, and consequently no access to the industrial dispute resolution system. Thus, the role as trade union with bargaining power is non-existent. Growth in overall union membership is therefore not the same as growth in the part of the system that has the power to address access to non-standard workers.

¹²⁹ FH areas of priority 2023-26: <https://fho.dk/kontakt/om-fh/indsatsomraader-for-fagbevaegelsens-hovedorganisation-2023-2026/>

¹³⁰ [FAOS/Larsen & Ilsøe, "Innovative union services and non-standard workers in Denmark", 2023].

¹³¹ E.g. Danish Employers Confederation <https://www.da.dk/analyser/arbejdsmarkedet-i-tal/organisering-af-arbejdsmarked/>

¹³² FAOS, *Lille stigning i organisationsgraden på det danske arbejdsmarked*, 19 May 2026, <https://faos.ku.dk/nyheder/lille-stigning-i-organisationsgraden-paa-det-danske-arbejdsmarked>

This is exacerbated by the differing approaches to e.g. platform work taken by the trade unions. E.g. the Christian Union in 2021 promoted, that platform workers should not be 'forced' into a 'box as employees.'¹³³

Meanwhile, the non-standard work is increasing. As an example, zero-hour contracts are in a recent survey estimated at around 300,000 workers, concentrated in hotel and restaurant, retail, and culture and leisure sectors, and new platform companies continue to enter the Danish market.¹³⁴

4.1.1 Advantages

First, access to trade union membership is broad across all three categories. Membership cannot be refused on the grounds of non-standard status, and refusals must be objective.

Second, category 1 workers are, by design, treated as part of "all employees" in both the collective bargaining system and the shop steward and cooperation systems. Inclusion is intentional, aimed at preventing circumvention and giving the strongest possible collective voice.

Third, enforcement in the industrial system is strong and applies equally once a worker is covered, regardless of union membership or contract type. The same dispute system, with real penalties for breach, applies to category 1 and to category 2 workers found to have employee status.

Fourth, the social partners have shown they can extend collective bargaining pragmatically to some persons in category 2 and category 3 through specific agreements, such as those for Hilfr.dk platform workers, voocali.dk freelance translators, the older agreement for veterinarians, and freelance journalists, without any change in legislation.

4.1.2 Disadvantages

First, access depends entirely on the will and bargaining power of individual trade unions, not on any legal duty. Declining membership in the traditional trade unions weakens both their bargaining power and their claim to represent the whole labour market. This is compounded by the fact that where membership numbers are holding up, as in Det Faglige Hus, this is often outside the collective bargaining system altogether, so it does not translate into stronger collective bargaining or dispute resolution coverage. This is a general weakness of the Danish model, and a particular one for extending representation to non-standard workers, since that extension has to come from within the collective bargaining unions themselves, at the same time as their base is shrinking and the number of atypical contracts is growing.

¹³³ Altinget, Debat: *Krifa: Atypiske ansættelser kan ikke elimineres med klassiske fagkampe*, september 2021, <https://www.alinget.dk/arbejdsmarked/artikel/krifa-atypiske-ansættelser-kan-ikke-elimineres-med-klassiske-fagkampe>

¹³⁴ A Ilsøe, T P Larsen, Forskere: De udskældte nul timerskontrakter både løfter og udfordrer arbejdsvilkår, Altinget september 2021, <https://www.alinget.dk/arbejdsmarked/artikel/forskere-de-udskaeldte-nul-timerskontrakter-baade-loeften-og-udfordrer-arbejdsvilkaar>

Second, category 3, the genuinely self-employed, is categorically excluded. This group has no access to collective bargaining, is not covered by collective bargained agreements, and has no access to shop steward representation, the cooperation committee system, or the Act on Information and Consultation, regardless of their actual dependence on a principal.

Third, the system rests on an old binary divide between employee and self-employed. There is no statutory presumption of employee status and no administrative fast track. Status is resolved case-by-case, only after a dispute has arisen, and there is no rule yet specifically for platform workers. The system likewise takes no clear position on newer, more fragmented forms of work generally, leaving their position open rather than settled.

Fourth, the conflict between competition law and industrial relations law for economically dependent self-employed workers remains unresolved. The *Hilfr.dk* decision shows that a collective agreement accepted by the social partners can still be found unlawful. This is the largest unresolved legal obstacle identified in this report.

Fifth, the statutory fallback for information and consultation at companies without a collective agreement is markedly weaker than the collective system. Its only enforcement mechanism is a criminal penalty, rarely used, leaving non-standard workers at non-organised companies with formal inclusion but little practical protection.

