

The impact of the Racial Equality Directive:  
a survey of trade unions and employers  
in the Member States of the European Union

Denmark

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## **1. Demographic Background**

As of January 1 2008, migrants and descendants of migrants constituted 9.1% of the total Danish population (*The Ministry of Refugee, Immigration and Integration Affairs*). Of these groups 2.9% originated from other Western European countries and two thirds (6.2%) from outside the EU. The largest groups of migrants and their descendants originate from Turkey, Iraq and Germany. Currently, the largest inflow of migrants into Denmark is from Poland. Employment levels are higher for migrants and descendants from EU15 countries than for migrants from non-EU countries. Similarly, more men than women are in full-time employment. This applies to both EU15 and non-EU countries. In the last 10 years there has been a particularly high increase in the number of work permits issued to workers from the new EU countries. Most work permits have been issued to migrants from Poland, Germany, China, Ukraine, India, Lithuania and the US. A study by the Ministry of Refugee, Immigration and Integration Affairs (*August 2008*) showed that young male migrants and their descendants were primarily employed in building and construction, engineering (metal work) and commercial and office work. Among women, health, trade and secretarial work are the main areas of work.

## **2. Industrial Relations**

The labour relations system in Denmark is defined as the 'Danish model'. The model is based on collective agreements concluded between employers' organisations, trade unions and the state, which typically define pay and working conditions. However, the state does not intervene in negotiations as long as employers' organisations and trade unions are able to reach agreements themselves. The core of the model is based on voluntary agreements between the social partners and is unique in the way that the state rarely interferes in labour market conditions.

In keeping with this strong social dialogue perspective an 'Implementation Committee' was established by the government in 2002 in which relevant unions and employers' organisations were invited to discuss the implementation of the 2000 EU Racial Equality Directive. The result of the consultations, which went on for a year, was the introduction of two 'minimum implementation' laws, the 'Law on ethnic equality' and the 'Law against differential treatment on the labour market', and the establishment of the Equality Board.

## **3. Trade Union and Employer Awareness**

In general, awareness of the 2000 EU Racial Equality Directive and of Danish laws among trade unions and employers' organisations is quite high in Denmark.

All the respondents representing trade unions are aware of the Racial Equality Directive and the Danish laws. However, awareness among union members is less widespread.

According to the interviewee from the Danish Confederation of Trade Unions (LO), ethnic minorities in particular have very little knowledge of Danish laws. Moreover, many of the respondents mention that a majority of ethnic minorities are not members of trade unions. For instance, the Danish Confederation of Professional Associations (AC) believes that many Eastern European workers are not aware of the role trade unions play in the Danish labour market.

All respondents express a need for more information. Only LO and the Timber, Industry and Construction Workers` Union (TIB) were able to recall a public information campaign about anti-discrimination laws, but they cannot remember anything specific. Moreover Fagligt Fælles Forbund (3F) argues that most employers have no or very limited knowledge of the laws on racial/ethnic/cultural discrimination. According to the respondent from 3F this is closely linked to the Danish self-image of having a unique and 'perfect' labour market where discrimination never occurs: 'There is a national denial of discrimination in Denmark – we can have conflicts, but there is never discrimination – this discourse effects the whole labour market and most corporations/enterprises/labour associations are subjected to this belief'.

LO participated in the Implementation Committee: 'The participants in the implementation committee agreed that when we implement in Denmark, we only do minimum implementation.... Improvements to minimum implementation should/could be made in agreements reached through collective bargaining. That is because these directives typically regulate conditions on the labour market and our basic position is that we should not have laws on these issues, we will address them ourselves.' LO advocates that agreements between unions and employer organisations are much more flexible and easier to enforce than legislation: 'Legislation often becomes rigid.... for example in cases where a worker is unjustifiably fired he/she will receive a salary for up to 52 weeks.... this is the form of agreements we have and they are easy to enforce' and further 'in most cases things are regulated by agreements not legislation, it is a much more flexible regulatory mechanism'.

AC was also invited by government to participate in consultations on the introduction of the Racial Equality Directive. AC also participated in EU's '*special committee*', which consulted on the directive before it was adopted. HK also participated in the '*implementation committee*'.

A general implication of the Danish labour market model is that the social partners in the labour market are very sceptical towards outside laws and they often find themselves in a dilemma, as the respondent from the 3F trade union federation argues; '*There is a conflict between collective rights – represented in the Danish model and individual rights – represented in EU – all the time we must be flexible and find the right balance*'. Also, the respondent from 3F argues that there is a fundamental fear in the Danish model that laws will dictate and limit the Danish model, which is based on dialogue and consensus. However, 3F's view is that Human Rights should overrule all agreements, and it has been a challenge for 3F to promote this point of view.

Of the six employers' associations interviewed, Danish Industry (DI), the Confederation of Danish Employers (DA), and Local Government Denmark (KL) were invited to participate in the Implementation Committee – these organisations were also involved in the EU 'special committee' that drafted the Racial Equality Directive. The three remaining employers' organisations participated indirectly in the Implementation Committee through their membership of DA. This is the classical Danish model, as most respondents emphasised: where relevant the two sides of industry are always involved in consultations with government. Because of their direct/indirect involvement in framing the Racial Equality Directive and in passing the national anti-discrimination laws, the respondents representing employers' organisations are quite aware of them.

As regards awareness of rights under the Racial Equality Directive and the national anti-discrimination laws among ethnic minority workers, only one respondent expressed a somewhat affirmative view. The respondent representing the Federation of Danish Master Painters (DM) argued that because of their contact with social workers, interpreters etc., who inform them about their rights, 'immigrants' are more aware of their rights under anti-discrimination legislation than are ethnic Danes. Although articulated differently, the other respondents did not think ethnic minority workers were aware of their rights. The respondent representing the Danish Construction Association (DB) stated: *'They are not unaware of it (the law). They consciously relate to "I am an immigrant" - there are workplaces in this society - but I do not think that many would move from this to being aware of laws that prohibit discrimination.'* Other employer interviewees confirmed this situation. The DI respondent opined: *'Our experience is generally that not many people are aware of their rights... I do not think they have become more aware of it.'* The KL respondent confirmed this assessment: *'On a scale from 0-10, it would probably be 0 or 0.1.'*

#### **4. Comments on the Equality Board**

All trade unions and employers' organisations are aware of the Equality Board. LO has extensive contact with the Danish Equality Board. However, many of the trade unions are critical of it: *'The Equality Board is just showbiz...'* The 3F goes on to argue that the capacity is very low, resources are limited and that only strong cases stand a chance: *'If we have any cases, we prefer to deal with them pertaining to labour law instead of pertaining to the Equality Board.'* Likewise, the criticism is made that the Board is situated only in Copenhagen and that very few efforts have been made to reach other parts of the country, which is why these parts tend to be excluded.

Only some of the interviewed representatives of the employers' organisations have direct contact with these bodies. For example, DI has initiated campaigns with the Danish Institute for Human Rights – but the nature of these campaigns was not disclosed.

## 5. Trade Union and Employer policies and measures

### 5.1 Trade Union policies and measures

None of the trade unions have specific policies or procedures to deal with discrimination against ethnic minority workers. Only 3F is now in the process of developing new formal policies and procedures on discrimination as a consequence of the implementation of the Racial Equality Directive.

LO has a 2008-2011 letter of intent in which the association outlines its intent to combat ethnic, racial, gender and sexual discrimination. The Danish Food and Allied Workers' Union (*NNF*) argues that anti-discrimination and equality always have been a part of the ideology of the trade union movement, but they have no formal policies on discrimination. A similar understanding is represented at TIB. The respondent stated that though TIB does not have formal policies on discrimination, it has policies regarding employment: *'One will be considered irrespective of ethnicity, race, age, gender etc.'* This policy dates from 1997.

HK had guidelines concerning discrimination in place in all departments before the introduction of the Racial Equality Directive and all staff members are well trained in legislation regarding discrimination.

LO has not taken up any discrimination cases, but its interviewee emphasises that the association will support workers who have been discriminated against. LO has a monopoly in conducting cases in the labour court when an employer has acted contrary to agreements. All other cases are dealt with in civil courts. LO stresses that it does not receive any complaints, which the respondent speculates could be because complaints are dealt with at the source (*locally*) or because legal action is simply not taken. The respondent repeated persistently: *'It is hard to prove that discrimination has occurred, the burden of proof is heavy.'* Although the respondent reckoned that, in time, it would be easier. *NNF* has only a few cases related to discrimination and that was in relation to sexuality. The respondent at TIB stated that they only have had one case. 3F has had two cases where 3F won both cases (*they were both obvious and there were witnesses*). AC does not conduct cases at all. However, the respondent knew of one discrimination case, where an Iranian psychologist was fired due to his ethnicity. HK has had a case concerning Muslim women's headscarves, and is now running another discrimination case.

The respondents at TIB, *NNF* and AC argue that gender equality has received increased attention within the last years and that debate about equal pay and women's position in the labour market has revitalised sensitivities.

All the trade unions provide courses and education for staff and most of them have changed practices to more anti-discrimination oriented approaches.

LO has distributed information about the union's juridical procedures to their members, which clarify legal procedures for dealing with cases where workers are unjustifiably

fired. LO has also publicised the legal framework and rights arising from the Racial Equality Directive. Furthermore, LO has adjusted its education and training as a result of the introduction of the Racial Equality Directive: *'More about discrimination has been included in the education... Though education of this kind has been a natural part of education and training since the 1960s when workers of a different ethnic origin started to enter the Danish labour market.'*

In relation to social dialogue, LO has entered into an agreement with employer organisations concerning gender but not relating to ethnicity, race, age etc: *'The employer organisations did not want to make agreements on these issues'*. Furthermore, it was emphasised that agreements on ethnic and racial discrimination were *'on the edge'* of what unions and employer organisations would enter into agreements about: *'Equal pay is straightforward, but these issues can be hard to enter into agreements about'*. In general LO argues that the employers' associations do not care too much about discrimination issues: *'They are not paid to deal with these issues but to tend their members' interests.'*

Likewise in NNF, the Danish Food and Allied Workers' Union, the Racial Equality Directive is included in the education/training. NNF has also published the legal framework and rights arising from the Racial Equality Directive in the union's journal. However, it has not been done altogether systematically within the union. TIB has not changed its training/education as a result of the introduction of the Racial Equality Directive and the national anti-discrimination laws, although it has publicised the legal rights arising from the Racial Equality Directive and the national anti-discrimination laws and it has established an equality committee that deals with issues pertaining to ethnic equality and gender, and which consists of six union representatives. TIB has, in cooperation with 3F and the Danish Construction Association, applied for funding from the state in order to inform migrant workers (*German, Eastern European and English*) about their rights and about conditions pertaining to collective agreements – the idea is also to inform foreign companies about conditions in Denmark. The project, which is called *'Work info'* started last year. TIB has also, in cooperation with the Danish Construction Association and the Danish Engineer's Association, created a trainee education programme which is distinctively directed at ethnic minorities: *'Before you sign an 'educational-contract', you start a trainee education which lasts up to 6 months. It is supposed to build up people's competences and prepare them for an education.'* The respondent could not say whether the Racial Equality Directive or the national anti-discrimination laws stimulated employers to adopt these anti-discrimination policies.

3F has a focal unit responsible for racial/ethnic/cultural discrimination. It provides courses on anti-discrimination to corporations and employers' associations. 3F has also distributed a Racial Equality Directive Circular and put considerable effort into creating awareness of the laws among the internal departments as it is important that all staff feel comfortable with all labour market laws. 3F also has an independent judge working with internal cases. Furthermore, 3F is cooperating with the Centre for Race Discrimination. 3F has also negotiated part of an agreement with employers on discrimination issues. A current example is a case of bereavement entitlements, where the agreement is

currently based on Danish customary law. 3F argues that the rules must be changed so that ethnic minorities can follow their own cultural practices.

AC has publicised the legal framework and rights arising from the Racial Equality Directive and has contact with the Danish Equality Body in EU's special committee. In HK the education and training of HK employees is also being upgraded. Legislation concerning discrimination is, according to the respondent, regularly being discussed in the HK, e.g. they send employees to different divisions in the union to discuss discrimination.

## 5.2 Employers policies and measures

None of the interviewed employers' organisations have any formal policies or procedures to deal with discrimination. The respondent representing DA stated: *'It is central to DA's basic foundation that employers should only focus on one thing, and that is to acquire the most qualified labour force. So, it is meaningless to make statements that one should not discriminate. All that matters is to acquire the best labour force on the labour market.'* However, while DI does not have any formal policies to deal with discrimination against migrant and ethnic minority workers, the organisation does have an internet portal with written guidelines that can guide members on how to combat discrimination.

DB has not had any discrimination cases, but the respondent recounted a case from an engineering school that occurred five years ago. In this particular case employers could write 'minus P' if they did not want to offer a 'Perker' (an insulting and derogatory term for ethnic minorities) a training place: 'The school discriminated in this manner because it wanted to help. It attempted to make sure that its students were going to training places where they were wanted and where they would be treated right.' The respondent added 'It is my impression that there are no (legal) cases; but it is not my impression that people are not being discriminated against.' The respondent speculated: *'That is probably also the reason why there are no cases, because they are hard to document. If one does not get a job or a training place, is it then because the individual is an immigrant? One cannot document that. It is very hard to document and that is also why I do not think there are any cases.'* The respondent had never heard of discrimination cases on account of race/ethnicity during her time at DB. However, the respondent had experienced numerous cases concerning women, though not all of them were taken up by the association.

The respondent at DMA also stated: *'We have not had any cases' and added: 'We concern ourselves very much with the issues of age and gender but not with the issues of ethnicity and race.'*

The respondents at DA confirmed the experiences expressed by the other employers' organisations by stating that there are largely no cases and discrimination was not seen as an issue that *'takes up a lot of space'* in Denmark. According to the respondents, it is age and disability issues that gave DA problems following the introduction of Equal

Treatment Directive. In addition, the respondents stated that it is traditional in Denmark for unions and employers' organisations to cooperate to increase the integration of migrants. The cooperation between unions and employers' organisations is based on the fact that about 40% of the migrants in Denmark are outside of the formal labour market, and thereby not visible to the companies when they are recruiting new workers. DA has participated in the conclusion of the so-called 'four-partite agreements' with the government, LO, and KL that was directed at improving integration of immigrants.<sup>1</sup>

DM has also never had any cases of racial discrimination but the respondent chose to elaborate on an episode in which a minority family acted in an '*Al Capone*' manner when a vocational legal decision did not favour them. In such cases trade unions and employer' organisations have the final word. The person in question thought that he had been treated unfairly, and arranged for some friends to arrive with guns. '*But this might as well have happened with a Danish member of Hells Angels.*' Moreover, the respondent could not recall any issues related to equal treatment of women with minority background, since none of these women are employed as painters. However, the respondent believed that the labour market in general has done '*a little too much*' to please immigrant women, i.e. permitting headscarves and separate locker rooms for Muslim women. The interviewee believed that this separation maintains inequality, and creates a negative attitude towards migrant women. '*Mr. and Mrs. Jensen [ordinary Danish names] probably would not accept a totally veiled painter in their home.*'

DI has not had any cases of racial discrimination. They have had some cases regarding religion, but in their opinion, the problems are being solved at the workplace and the employers do not consider it to be a major issue. For that reason, the respondents asserted that DI focuses on integration, not discrimination: '*Generally I do not think there are many cases [...] One theory could be that the companies involved in an employers' association have signed agreements and thus are aware of the rules.*'

The respondent at KL stated, in harmony with the other employers' organisations, that there are no discrimination cases. Furthermore, they stated that the introduction of the Racial Equality Directive did not have any influence and that the implementation committee did not discuss ethnic/racial rights much. However, the provisions on age in the Racial Equality Directive were a central issue for discussion in the committee: '*We are being discriminated against because of age in our collective agreements and there are some 'exception-provisions' in the Racial Equality Directive which stipulates that one can do it [make exceptions] if it serves a professional and unbiased purpose.*' Also, KL is working to ensure that the Danish municipalities hire people with different ethnic backgrounds. The objective is that the composition of municipalities' labour forces reflects the general population in Denmark. Ethnic minorities are currently under-represented in the municipalities – only 6, 2 % of the total labour force of municipalities are ethnic minorities ([www.kl.dk](http://www.kl.dk))<sup>2</sup>. KL monitors the development and writes a report

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<sup>1</sup> The four-partite agreement concluded between the Government, DA, KL, LO, AC, the Danish Employers' Association for the Financial Sector (FA), FTF, LH and Sal A, June 20 2006.

[http://www.nyidanmark.dk/resources.ashx/Resources/Publikationer/Andet/2006/aftaletekst\\_firepart.pdf](http://www.nyidanmark.dk/resources.ashx/Resources/Publikationer/Andet/2006/aftaletekst_firepart.pdf)

<sup>2</sup> <http://www.kl.dk/ledelse/Artikler/49825/2008/05/Flere-og-flere-indvandrere-i-kommunale-job/>



(*National Action Report*) every year - the above mentioned figures were disclosed by the respondent.

Only one of the interviewed employers' organisations changed its education and training of employees following the introduction of the Racial Equality Directive. Because DA conducts legal guidance and training, the organisation is attentive to the introduction of new laws and has integrated the laws following the introduction of the Racial Equality Directive into its education/training. However, the new laws do not figure as a specific topic in DA's training/education. DA is cooperating with LO and KL to improve the conditions of people who are outside of the labour market. The respondents stated that DA participated in developing *'job-packages'* which are specially made to upgrade an individual who is outside of the labour market and thereby facilitate the individual's entry into the labour market: *'It [a report we were given about the 'job-packages'] can be used for individuals with a Danish background as well as for immigrants.'* The respondents stated that the largest inflow of foreign people to Denmark is made up of migrant workers and that DA participates in a project with KL and LO on how best to receive and integrate them. Also, DA has advocated the opening of the Danish borders in order to access and attract skilled labour.

While DM has informed employees in their legal department about the legal framework and rights arising from the Racial Equality Directive, nothing has been written down. The interviewee reported, however, that meetings on the subject are held on a weekly basis. Though no changes to their education/training have been made, the respondent from KL stated that the organisation has informed the municipalities about the Racial Equality Directive and that KL always does this when new legislation on relevant issues has been passed at the European level. Since 1999, DM has worked with the public job centres in Copenhagen on recruitment. With respect to gender, the overall distribution now is two thirds men and one third women. None of these women, however, have migrant backgrounds.

According to the respondent from DI, its employees are aware of the legal framework and rights arising from the Racial Equality Directive – it is published on DI's webpage. With regards to social dialogue, DI has cooperated with the Ministry of Integration in order to induce more ethnic minority women to enter the labour market.

The Ministry of Integration is funding the DB and the municipality of Copenhagen to carry out an integration project. Rather than attempting to organise work placements for all, the project is directed at helping minority youths who have strived, and expressed a wish, to enter the building and construction sector but have not been able to get a work placement. The respondent at DB elaborated on the merit of the integration project: *'We have found out that it probably isn't direct discrimination. People do not say "we do not want somebody called Mohammed". It is more "we will choose Brian because that is what we usually do", and that is why Mohammed does not get a training place. It is also because the building and construction sector, like many other sectors, recruit via closed networks, i.e. sons, friends etc., so Danes who likewise do not know anybody in the sector also have difficulties getting in. It is this closeness that we are trying to open up.'* According to the respondent, the Ministry of Integration has conducted a survey which

illustrates that only one out of two Danes get a training place. However, the same survey showed that only one out of six who are from ethnic minority origins get a training place: *'So discrimination does exist.'*

## **6. Views on how to tackle discrimination better**

All the trade unions emphasised the need for government information campaigns to raise public awareness of the legislation and legal framework around discrimination. A lack of information among workers means that many do not have knowledge of their rights and about the national formal complaint mechanisms. The government has not allocated money to disseminate information about the law and there are no folders in different languages. The respondent from 3F agrees that the Danish government has implemented the law only on paper, e.g. the government has only allocated 1.8 millions DKK to the implementation of the Racial Equality Directive (*in comparison Norway has allocated 33 million NOK to a similar project*): *'There is no quality in the Danish implementation and it has no real effect in practice'*.

Moreover, it is argued that the Racial Equality Directive and the national laws create a secure and strong foundation for the rights of the workers and gives more instruments to the legal rights of the individual. The EU has pointed a finger at the issue of discrimination in the labour market and given the government concrete tools, but the government has not used the opportunity. Thus 3F argues that the EU must be more normative and set up demands to improve the quality of implementation of the law. Minimum standards are not enough. The EU must be more aggressive and set demands in relation to, for example, advisory services, budgets for information, etc. It is a weakness in the EU framework when rights are reduced to the lowest common denominator. It is important to have regional officers and cooperation with civil society organisations. Also, it would be a huge step to create an ombudsman/woman specifically for equal treatment. Other trade unions are a little more moderate in their points of view, as many fears that EU laws will undermine the Danish model, which is the foundation of Danish labour relations.

The majority of the employers' organisations interviewed questioned the usefulness of anti-discrimination laws. The representative of KL stated: *'They are based on a naïve idea [...] I consider it a misconception to think that one can pass laws on these issues [...] Legislation will not solve these issues.'* Finally, the respondent stated that the EU should consider to what extent discrimination was a problem to begin with: *'How widespread was the problem on the labour market? There was no problem.'*

The respondents at DA claimed that anti-discrimination laws do not achieve their intended purposes and questioned the value of continuously discussing discrimination if one wants to integrate people: *'The aim should be to integrate people into the labour market on equal basis with the other citizens. That will create the best society in the long term.'* Also, the respondent at DB did not think that the Racial Equality Directive and national anti-discrimination laws had improved protection against discrimination: *'Because when it is embedded in the norms we have, then it cannot be regulated via*

legislation. It is difficult to regulate how one recruit via laws and nothing good would come out of it. It is fine to have these laws as a signal, but they cannot be used to control people. It is important to criticise the norms, instead of just criticising the immigrants, and then ask ourselves “why is it we are closing the labour market to these groups?”

Finally, the respondent at DM stated: *‘Instead of always standing with the law in our hands, we have tried to reach them personally and explain how the Danish system works. Then they can tell us how it works in their country, and then we say fine, but this is how it works here. We try to use the present know-how. We run things based on dialogue. [Our Indian/Pakistani colleague] goes to talk to them. If we as Danes go there, they reject us, and think that we are just after their money.’*

On the other hand, the respondents at DI asserted that the Racial Equality Directive and the national anti-discrimination laws have improved protection against racial/ethnic discrimination in employment, because it has strengthened information about what is legal and what is not.

Though anti-discrimination laws were not perceived as achieving their purposes, the respondents at DA stated that the Racial Equality Directive and the Danish anti-discrimination laws have value. The formal protection which is provided by the laws was seen as significant: *‘That is because we do everything we can to inform employers and employers are generally people who upholds the law. If legislation exists which leads to someone obtaining a large financial settlement if you step over the line, then it is something that employers will be informed about. The laws have meaning even though we do not have 100 cases.’*

Finally, the respondent at KL stated that additional measures or alternative measures could be the initiatives started in the Danish municipalities – hire more ethnic minorities. Furthermore, the respondent considered examples of people from ethnic minorities who have made an impressive career for themselves as exemplars to be emphasised.

There was thus a clear division between most of the employers and the unions in their views on the future of the Racial Equality Directive. All the unions emphasised the need for government information campaigns, and felt that more resources had to be given to the Equality Board if it was to have any effect. The Transport, Building and Construction industry union called for the establishment of an Ombudsman system specifically on Equal Treatment. Although the municipal employers’ respondent felt that more measures aimed at hiring ethnic minorities should be adopted, and that the achievements of people from ethnic minorities should be publicised, the majority of the employers’ organisations questioned the usefulness of anti-discrimination laws. The representative of one observed: *‘They are based on a naïve idea... I consider it a misconception to think that one can pass laws on these issues... Legislation will not solve these issues.’* Another opined that the law could be counter-productive and questioned the value of continuously discussing discrimination if the aim was ‘to integrate people into the labour market on an equal basis with the other citizens’.