

Resolution on the future of European labour law

The labour market and the European and global development

For long periods during the previous century, the Danish trade union movement could see to workers' interests mainly by concluding collective agreements with the Danish employers' organisations on behalf of its members. At the same time, other conditions on the labour market were being developed - including the welfare state behind which the Social Democratic Party was the motive force.

But the world is changing, and this affects Denmark and the Danish labour market.

Globalisation is an unquestionable fact. It entails both challenges and opportunities. The trade union movement represented through LO must work to prevent social dumping while free and fair trade is being extended to a growing number of countries. There must be an element of solidarity with the poorest countries in the world while state protectionism of companies to an increasing extent is being prohibited.

At the European level, the EU plays a crucial role. There is free movement of capital, goods, services and labour in the EU. As a counterweight to this liberalisation of the markets of its member countries, the EU has a social dimension which is to ensure reasonable working conditions, amongst others. The European market will now be enlarged considerably in connection with the enlargement of the EU with up to 75 million new citizens.

The EU acts as an entity in respect of global trade. Denmark's influence on global trade is thus exerted via the EU. This is, for example, the case in connection with a number of areas of the World Trade Organisation, the WTO over which the EU has exclusive jurisdiction.

This political development is in line with the cross-border economic development and the developments in company law. To put it simply, workplaces are getting bigger and bigger. Companies make cross-border mergers and a large number of Danish workers are employed in multinational companies.

Globalisation and the closer ties between the European countries and companies have the effect that Danish collective agreements and Danish legislation is no longer sufficient in terms of seeing to the interests of Danish workers.

For a number of years, LO has thus been an active player in connection with the development of social dialogue in the EU and LO has sought to influence the European and global development in general.

LO will continue to strengthen the work to seek international solutions to international issues.

LO will work to ensure that internationalisation does not take place at the expense of workers' conditions in Denmark or in other countries.

LO will particularly carry on and strengthen the work to influence the decision-making processes of the EU. Amongst others, this will take place via an active cooperation with our European central organisation, the European Trade Union Confederation (ETUC).

EU Legislation

EU legislation on the labour market takes place at several levels.

The most general and fundamental rules can be found in the EC Treaty. The EC Treaty is of a general nature compared to the rest of the EU legislation.

The EC Treaty contains a few – but essential – rules on the labour market. The most essential rule on the free movement of labour can be found here. Moreover, the most well-known rule is probably the rule on equal pay.

Finally, the EC Treaty authorises the promulgation of the EU's additional legislation on the labour market which takes the form of directives. In this connection, the EC Treaty vests the social partners with a prominent role.

The EU has passed a number of important directives that involve the labour market. A total of 19 directives on labour market issues have been adopted. These directives lay down minimum standards, which the member states may choose to maintain or they may choose to establish a higher level of protection.

Since the Maastricht Treaty stepped into force on 1 November 1993, the social partners have been given a particularly prominent role. The social partners must be involved prior to the introduction of a proposed directive – and they may take over the regulation by commencing negotiations and concluding an agreement on the issue in question.

In this connection, there is a possibility for the social partners to conclude an agreement which is subsequently given the force of law through a directive. So far, agreements have been concluded on part-time work, parental leave and fixed-term work.

After consultation with the social partners, directives are adopted in cooperation between the Commission, the Council and the European Parliament. As a general rule, the adoption of directives

requires a qualified majority in the Council. Meanwhile, a number of issues require unanimity. This is the case for, amongst others, social security and the social protection of workers, the protection of workers whose employment contract is terminated, information, consultation, representation, co-determination and conditions of employment for third-country nationals legally residing in Community territory.

The present proposals from the EU's Convention working with changes to the EU Treaty have not brought about fundamental changes in terms of the EU's jurisdiction to adopt legislation on labour market issues.

However, it is necessary to be aware of the fact that, as a consequence of the enlargement, legislating in areas that require unanimity will become more complicated.

The EC-treaties constitute the basis for the EU's labour market legislation. The proposed changes to the treaties maintain the legislative structure of the labour market and constitute a good point of departure for the future work.

Meanwhile, the interests of the workers seen to by the trade union movement through LO-DK and at the European level should – in so far as possible – take place through collective agreements with the employers. This will be possible through agreements between the European social partners, the ETUC on the worker-side, and UNICE/CEEP on the employer-side and through trade-specific agreements concluded by the European industry federations.

At the same time, there is a need for the EU to continue to have legislative powers in respect of labour market issues that will benefit workers. In this connection, it is a precondition that directives respect national collective agreements, as has so far been the case.

There may be issues that are best dealt with through legislation. This may be so in cases where, for instance, there is an extent of interplay between company law and labour law. This has thus been the case in connection with the new legislation on the European Company, which consists of a regulation that prescribes how companies can form a European Company and a directive on the involvement of employees in the European Company. Such a directive could hardly be replaced by an agreement between the European social partners.

At present, the European social partners can only agree to negotiate a limited number of issues. This further underlines the need to continue to be able to apply EU-legislation in areas where European regulation is needed.

In so far as possible, the implementation of directives into Danish law shall continue to take place via collective agreements.

The development of the European negotiation-based model

Today, collective agreements are entered into on a cross-border level. These are both European group agreements (specific agreements on European Works Councils) and agreements between European organisations.

EU-legislation contains no provisions on the specific rules on concluding and enforcing collective agreements at the European level. The social partners in Europe have not agreed on any such rules either.

The legal effects of collective European agreements are therefore not quite clear and the possibilities of enforcement are equally unclear. However, there are currently some discussions on this issue at the European level.

As early as during its Congress in Helsinki in 1999, the ETUC adopted a resolution stating that the ETUC shall work to establish a supplementary system of industrial relations at the European level.

At the Congress of May 2003, this aim was incorporated into its statutes.

The ETUC Congress also adopted an action programme containing several provisions on this issue.

In this connection, one of the provisions states the aim to build a real European negotiating space for the social partners to defend workers' interests and another provision states the aim of preparing the ground for a social partner agreement setting out the framework for autonomous negotiations at European level, including the related questions of mediation and other issues.

Finally, a section of the action programme calls for a special EC-court, which should include assisting experts appointed by the social partners. It has not yet been decided whether this special court shall have jurisdiction to deal with European collective agreements.

Through these congressional resolutions, the ETUC has paved the way for continuing the work with these issues.

The EU-Commission, which has encouraged the social partners in Europe to make voluntary negotiations on several occasions, has planned a consultation of the social partners on the issue of the need for mediation and conciliation mechanisms at the European level. However, this consultation has been postponed indefinitely.

Meanwhile, the Convention on the Future of Europe has not given any particular focus to agreements between the social partners and has, in particular, not provided concrete proposals regarding the right to industrial action, the legal effects and the enforcement of these agreements.

The European social partners, the ETUC, UNICE, UEAPME and the CEEP have adopted an action programme for 2003-2005 in which they contemplate further voluntary agreements. However, the programme does not plan any discussions between the parties on fundamental rules on the conclusion and enforcement of agreements.

By dealing with the issue of a supplementary industrial relations' system at its 2003 Congress, LO has placed itself at the cutting edge of a development which will undoubtedly become subject to many discussions, both nationally and internationally, in the years to come.

The European development creates a situation where workers are increasingly becoming employed in multinational companies. In certain professions and trades in Denmark, up to 75 % of the workers are employed in an international group.

Cross-border agreements are becoming increasingly common, both in the form of group agreements and agreements between the European social partners.

Group agreements are mainly concluded in the form of agreements on European Works Councils, but in future, they will also take the form of information/consultation/co-determination in the European Company, and may also deal with other issues.

Compared to Danish collective agreements, European group agreements are relatively more difficult to enforce.

Social partners' agreements are not that widespread. Meanwhile, they are relevant in respect of considerations to regulate a given area through legislation at the European level. In 2002, social partners' agreements saw a breakthrough in connection with the conclusion of the agreement on telework. This was the first voluntary agreement of the European social partners which would not form the basis for a subsequent directive. Certain sectoral agreements have also been concluded.

Meanwhile, the legal effects of the European social partners' agreements are unclear and the possibilities of enforcement are highly uncertain.

The future development

The above mentioned agreements that are concluded at the European level these days are not of a nature that allows them to replace Danish collective agreements. They complement the current agreements and are of great importance to workers.

Therefore, in view of the development that we are currently witnessing, it is necessary to see to the interests of the members.

There is a need to establish a supplementary European system of industrial relations which contains certain basic rules for collective agreements at the European level. This must take place in a way that ensures that workers' rights are not undermined while at the same time ensuring that the national collective agreements are preserved.

As a point of departure, a supplementary European system of industrial relations should be established through an agreement. However, this is not the case for a possible European industrial court which must be based in the Treaty. Furthermore, it cannot be ruled out beforehand that other elements could be introduced through EU-regulation.

The specific details of a supplementary European system of industrial relations need to be considered and negotiated more thoroughly together with our European colleagues in our European central organisation, the ETUC, and in the European employers' associations and in the competent bodies of the EU.

In this connection, LO will look positively and constructively on the expected consultation from the Commission on mediation and conciliation mechanisms. However, if this proposal only mentions voluntary mediation etc. it does not seem sufficient for standing on its own.

The general elements of a supplementary European system of industrial relations should further consist of a basic framework agreement between the European central organisations, beginning in the private sector, and a dispute settlement system for the settlement of disputes regarding concluded agreements.

A framework agreement on general rules for European collective agreements

Such an agreement shall be concluded between the European central organisations, the ETUC and UNICE.

The agreement is to promote the agreement approach at social partner level and ensure the implementation of workers' rights in pursuance of social partners' agreements in the individual countries and secure the agreement framework for both group agreements and social partners' agreements.

First of all, a basic framework agreement shall therefore contain rules on the mutual recognition of the social partners as well as an obligation to take the agreement approach, in so far as possible, in connection with social partners' agreements.

Furthermore, the agreement shall contain rules on the conclusion, legal effects and termination of cross-border agreements. These rules are all well known in the Danish general agreements. A basic framework agreement between the European central organisations, the ETUC and UNICE is to be supplemented with provisions on how to implement European social partners' agreements on the national labour markets.

Furthermore, provisions regarding a Permanent Arbitration Court, cf. the below section, may be included.

There is no immediate need to transfer the Danish rules on industrial action to the European level.

A European dispute settlement system

There is a need for the above mentioned agreements to give workers genuine rights. In this connection, it is necessary to ensure that the agreements are respected. This must also be the case in situations where the employers contest the workers' interpretation of an agreement. In other words, there is a need for an independent body with the jurisdiction to interpret European agreements.

A dispute settlement system must be established with a view to ensuring a secure and joint interpretation of the agreements that are concluded at the European level and that will later be implemented at the national level.

As a point of departure, it is thus not the task of the dispute settlement system to impose joint European sanctions. The sanctioning must continue to take place at the national level, which in Denmark would normally fall under the jurisdiction of the Industrial Court.

A dispute settlement body must be established with a view to interpreting European agreements. The jurisdiction of this body must be voluntary. This means that the parties, as is currently the case in the Danish Industrial Court in connection with the conclusion of agreements at the European level, shall have the possibility to arrange other forms of interpretation and enforcement of an agreement, for example by industrial arbitration. No one shall thus be forced to use the dispute settlement body against their will.

As is the case with the Danish Industrial Court and the Danish industrial arbitration courts, the dispute settlement body shall sit with professional judges that are to assist with expert knowledge on labour market affairs.

Since the advanced negotiations on a renewal of the treaty basis of the EU do not include proposals that allow for the setting up of such a dispute settlement body in the form of a special court (without the possibility for appeal to the present EC-court), there is ample time for further considerations on the most suitable ways of setting up such a body. Provided that the necessary changes are made to the Treaty, it may take the form of a special division of the EC-Court or a Permanent Industrial Arbitration Court. This may take place in connection with the above-mentioned framework agreements on general rules governing European collective agreements or as a special agreement between the same parties.

Before reaching the final decision on how to set up such a body, it must be clarified whether the European social partners are willing to enter into voluntary and supplementary framework agreements on general rules governing European collective agreements.

In connection with such future considerations, it must also be considered whether or not there is a need to assign the jurisdiction to interpret negotiated directives and directives on working conditions and employment conditions to a special division of the EC-Court sitting with judges that have been elected by the social partners.