



**PROCUFAIR COUNTRY REPORT**

**DENMARK**

**Promoting Decent Work Through Public Procurement in  
Cleaning & Private Security Services**

**Co-financed by the European Commission**



**AALBORG UNIVERSITY**  
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UNIVERSITY OF  
COPENHAGEN



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# Table of content

<b>Introduction.....</b>	<b>1</b>
<b>Part ONE: Protective gaps and challenges in the cleaning and security services industry and the potential role of Buying Decent Work (BDW) .....</b>	<b>4</b>
<i>Description of the two sectors.....</i>	<i>4</i>
<i>Protective gaps and challenges and the role of BDW and labour clauses in addressing these.....</i>	<i>7</i>
<i>Potential role of Buying Decent work (BDW) policies and practices .....</i>	<i>9</i>
<b>Part TWO: Policy developments relevant for BDW .....</b>	<b>11</b>
<i>Policy and legislative changes on BDW since 2014 .....</i>	<i>11</i>
<i>Lacking professionalisation of the field of BDW.....</i>	<i>12</i>
<i>Interplay between collective agreements and procurement-specific provisions.....</i>	<i>14</i>
<i>The core issue of control and sanctions.....</i>	<i>17</i>
<i>BDW is still affected by uncertainty .....</i>	<i>18</i>
<i>Concluding discussion.....</i>	<i>19</i>
<b>Part THREE: Case studies .....</b>	<b>21</b>
<i>CASE STUDY DK-1: Danish National Task Force for Labour Clauses .....</i>	<i>21</i>
<i>CASE STUDY DK-2: The appendix 1A-I in the labour clauses in security services.....</i>	<i>28</i>
<i>CASE STUDY DK-3: Cross-Municipal inspection unit in the greater Copenhagen area .....</i>	<i>33</i>
<i>CASE STUDY DK-4: Cross-Municipal enforcement cooperation on Funen .....</i>	<i>41</i>
<b>References.....</b>	<b>47</b>
<b>List of Interviews.....</b>	<b>51</b>

## Introduction

Buying decent work has attracted increased political and academic attention in Denmark, where especially trade unions and centre-left political parties have pushed the agenda for applying labour clauses in public procurement as well as ensure their enforcement (Jaehrling et al., 2018; Rasmussen et al., 2016; Refslund et al., 2020). Recent figures suggest all Danish regional authorities and nine out of ten Danish municipalities apply labour clauses in some of their public procured work (3F, 2021; KL, 2015). They often use “generic” labour clauses aligned with the ILO-94 convention and typically request suppliers and subcontractors to adhere to wages and working conditions in the most representative collective agreement within the relevant sector (Refslund et al., 2020). While it is optional for the 98 Danish municipalities and five regional authorities to apply labour clauses in public procurement, it has been compulsory for state authorities to include labour clauses in all forms of public procured work since 2014 (Ministry of Employment, 2014).

Although the usage of labour clauses is accordingly widespread in much public procured work, in particular at the state level, the enforcement of the labour clauses appears rather patchy. Recent studies indicate that around 40 per cent of Danish municipalities have agreed to carry out regular inspections of private contractors’ compliance with the labour clauses, only one in three of the municipalities regular conduct inspections and even fewer – one in five – have set-up specific control units (3F, 2021). Also, among the regional- and state authorities are the enforcement practices less developed, although for state authorities some progress have been made (see for instance CASE STUDY DK-1 below). The implications of the less developed enforcement mechanisms may contribute to subcontracted workers experiencing wage and working conditions below Danish labour market standards. However, no full figures are available as to how many subcontracted workers there are in the public sector in Denmark as well as to what characterizes their wage and working conditions. However, a recent large-scale Danish survey among low wage workers, gives a glimpse of the share of subcontracted workers and their wage and working conditions (Larsen et al., 2022). The study indicates that around 9% of low-wage workers are subcontracted workers in that they work at a public or private workplace, but are employed by a private contractor or subcontractor following public tenders (Larsen et al., 2022). Many subcontracted workers – nearly one in five – work without an employment contract, and even more experience that their contract is without any guaranteed hours, and they regularly put in extra hours (as much as 11 hours per week) without being paid (Larsen and Ilsøe, 2023). They also tend to experience lower levels of social and employment protection than their peers in traditional full-time employment but appear better protected than other groups of non-standard workers both in terms of working at workplace with collective bargaining coverage and access to various statutory and collective agreed social benefits (Larsen and Ilsøe, 2023).

Therefore, despite the good intentions of applying labour clauses in public procurement to secure decent public procured work, the day-to-day realities for many subcontracted workers appear somewhat different with some experiencing wage and working conditions below the collective agreed labour standards (Larsen and Ilsøe, 2023; Arnholtz and Andersen, 2018; Rasmussen et al., 2016). To respond to these challenges, Danish public authorities often together with social partners have developed a range of innovative and often experimental measures to strengthen the enforcement of labour clauses with the aim to create a level playing field and secure decent wage and working conditions in public procured work.

This report accordingly explores the recent development in Danish public procurement practices, notably the usage and enforcement of labour clauses through innovative measures to secure and promote decent wage and working conditions within public procured cleaning and private security services.

### **PROCURFAIR Project – Research questions and design**

The report is the Danish contribution to the EU funded project entitled “Promoting decent work through public procurement in cleaning and private security services” (Procurfair).<sup>1</sup> The project aims to explore how public authorities have developed or experimented with novel practices to ensure decent working conditions within public procured work across distinct industrial relations and welfare regimes such as Denmark, UK, France, Germany, Italy, and Poland. Through in-depth case studies in each of the six selected countries, the project examines innovative or experimental solutions of public procurement practices to secure and promote decent work within public procured cleaning and security services. Part of these analyses are to assess the impact and experiences of experimenting with these novel ways of developing, promoting and not least enforcing labour clauses in public procured work. To guide the case studies and the national data collection the following topics were addressed in all the participating countries and in the cross-national analyses:

- (1) **Protective gaps and goals:** What are the most important protective gaps for employees under public contracts that are not sufficiently addressed by established forms of work regulation and that would therefore benefit from ‘organisational and institutional experimentation’ in public procurement practices? Which of these gaps do public purchasers and social actors target with their strategic experimentation on social responsible public procurement?
- (2) **Strategies:** Which tools and resources do actors mobilise for this purpose; to what extent do they seek to build alliances (between peer organisations; between representatives of employers, employees, customers, public purchasers and other types of organisations involved in social responsible public procurement (e.g. control agencies, inspectorates)?
- (3) **Learning processes:** What kind of conflicts and obstacles arise in the process and how do actors cope with them?
- (4) **Institutional constraints and support:** What role do regulative and budgetary constraints play? To what extent and how has the new EU procurement regime stimulated new experiments? To what extent does subnational, national and European legislation and jurisdiction inhibit a stabilization of experiments or force actors to adjust their strategies?
- (5) **Overall lessons:** What are the lessons for trade unions, employers, local authorities and governments in how to more effectively use public procurement for securing decent work?

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<sup>1</sup> The project was funded by the European Commission – DG for Employment and Social Affairs (Call ‘Improving expertise in the field of industrial relations’, Grant VS/2021/0211) and managed by Mark Bergfeld at UNI Europa’s Property Services office which covers the services sectors of industrial cleaning and private security. The scientific coordination of the project was assumed by Karen Jaehrling at the University of Duisburg-Essen’s Institute for Works, Skills and Training (IAQ), Germany.

For a more detailed account of the research design and methodology, key concepts and findings from the cross-national analysis see the comparative report (Jaehrling 2023)

The comparative report, as well as all 6 country reports of the PROCURFAIR project are available at: <https://www.uni-europa.org/procurfair/>.

To address these research questions, we draw on a total of 30 interviews with representatives from trade unions (7 interviews), employers' associations (4 interviews), policy-makers (1 interview), municipalities (12 interviews) and state authorities (6 interviews) as well as findings from a national workshop with nine key stakeholders. The data material has been triangulated with desk research of relevant policy documents, labour clauses, collective agreements, statutory labour and public procurement laws as well as minutes from local municipal and parliamentary debates.

### **Structure of the report**

The report is organised into three main subsections. Firstly, we describe the recent development in the usage of labour clauses in public procured work in Denmark (Part ONE), before we present an overview of buying decent work and the recent development in cleaning and security services (Part TWO). Part THREE is devoted to the four case studies carried out for the project.

# **Part ONE: Protective gaps and challenges in the cleaning and security services industry and the potential role of Buying Decent Work (BDW)**

## **Description of the two sectors**

### **Cleaning**

The Danish cleaning activities represent a small segment of the Danish labour market although the sector has expanded when measured in terms of economic turnover and number of employees (table 1). The cleaning sector or activities cover both window cleaning and ordinary cleaning services that are provided by a wide range of suppliers in the public and private sector. In this context, there have been increased public procurement of cleaning services from private suppliers as well as private companies outsourcing cleaning tasks to private cleaning companies (Mailand and Larsen, 2018). This development started in the early 1990s and within the last few years new players in terms of digital cleaning platforms have gained foothold within the sector, where they particularly target their services to private households (Mailand and Larsen, 2018; Ilsøe and Larsen, 2021). However, there have also been examples of digital labour platforms competing in public tenders on cleaning services, although the public procurement and outsourcing of cleaning activities typically involve both traditional private companies and public authorities, including local government departments responsible for cleaning services (Mailand and Larsen 2018: 17; Ilsøe and Larsen, 2021).

Recent Eurostat figures indicate that around 41.409 workers are employed within the Danish cleaning activities, corresponding to around 2 per cent of all employed on the Danish labour market (table 1; Larsen et al., 2019). According to recent LFS data, the sector has expanded with the overall employment figure increasing from 34.590 employee in 2010 to 41.409 employee in 2020 (table 1). However, Register data from Statistic Denmark report of higher and more stable employment figures (around 55.000 employees both years). These data show a noticeable trend towards an increasing share of the cleaning activities is performed by private sector employees, who accounted for 74 % of all cleaning activity in 2020 as opposed to only 67 % in 2010 (Statistics Denmark, authors' own calculations). These figures suggests that while the demand for cleaning is relatively constant, outsourcing has shifted further employment from the public to the private sector.

**Table 1: The Danish cleaning and private security activities in key figures (2010-2020)**

NACE_R2 (Labels)	Private security activities (NACE 80.1)			Cleaning activities (NACE 81.2)		
	2010	2020	2010-20	2010	2020	2010-20
Enterprises – number	302	286	-5%	5.530	5.913	+7%
Turnover or gross premiums written - million euro	179,4	323,7	+80%	2.152,5	2.572,5	+20%
Wages and Salaries - million euro	91,4	163,7	+79%	1.027,4	1.330,7	+30%
Employees – number	2.764	3.634	+31%	34.590	41.409	+20%
Employees in full time equivalent units – number	1.897	2.805	+48%	24.515	26.487	+8%

Source: Eurostat (2023): Annual detailed enterprise statistics for services, retrieved from Eurostat database <https://ec.europa.eu/eurostat/de/web/main/data/database>

Register data from Statistics Denmark shows that the median wage characterising cleaning activities was 169 DKK in 2020 (approximately €22,5), which amounts to 82 % of the median wage for the total Danish labour market (Authors’ own calculations based on register data from Statistics Denmark). It is thus a low wage sector compared to the overall Danish labour market. The development of the median wage within the sector has more or less followed those of the overall labour market during the last decade, up from 154 DKK in 2010, which amounted to 84 % of the overall median wage (Authors’ own calculations based on register data from Statistics Denmark). Furthermore, despite being a low-wage sector, only 7,6 % of the employees in the sector experience low wage work in 2020 – defined as working for hourly wage below 66 % of the national median wage. One explanation can be that the collective agreement sets a wage floor of around 133,2 DKK (approximately €17,9 Euro), which is close to the low wage threshold of 138 DKK in 2020 (Authors’ own calculations based on register data from Statistics Denmark). There are no official data on the collective agreement coverage in the sector, but interviewees and other studies estimate that it is around 40-50 percent which is comparatively lower than the overall collective bargaining coverage on the Danish labour market (80 per cent) (Larsen and Ilsøe, 2022). Nonetheless, the collective agreements may still have a positive spill-over effect on jobs not covered directly by the collective agreement both through labour market wage formation and due to labour clauses, that refer to the standards of the collective agreements. Also, 55% of the employees in the sector are trade union members in 2020 (Authors’ own calculation based on register data from Statistic Denmark, which is somewhat below the national average, but still relatively high compared to other countries).



**Table 2: The Danish cleaning and private security activities – wage levels and in-work poverty rate in 2020**

	Private security activities		Cleaning activities	
	2010	2020	2010	2020
<b>Median wage</b>	185 DKK (€24,8)	202 DKK (€27,1)	154 DKK (€20,7)	169 DKK (€22,5)
<b>Low wage work (below 66% of the national median wage)</b>	0 %	2%	6,31 %	7,6%
<b>Collective agreed wages</b>	130 DKK (€17,4)	164 DKK (€22)	110 DKK (€ 14,8)	133,2 DKK (€17,9)

Source: Authors own calculations based on data from Statistics Denmark (2023); DI et al. 2010; DI & 3F (2020); DI & VSL (2010; 2020)

Yet, beyond the relatively low median wage, there are other factors that indicate that there may be protective gaps in the sector. **Data from the Labour Force Survey indicates that one in three cleaners work part time (compared to 24 % overall on the Danish labour market) and often on contracts with few or no guaranteed hours.** Around one in ten work less than 15 hours per week and solo- self-employment is also rather widespread within the sector, where many cleaners also tend to be multiple job holders to make ends meet (Larsen et al., 2022; Authors’ own calculations based on LFS data). In addition, around one in three part-time workers working with cleaning activities work part-time involuntarily (compared to 15 % of part-time workers generally) in 2020 (Authors own calculations based on LFS data).

**Interviewees and other recent studies also suggest that an increasing number of workers have zero-hour contracts, and many with low volume of work when they work part-time** (Interview, 3F private services 1/22; Larsen et al. 2022). Combined with the relatively low hourly wages, there are genuine risks for having working poor within the sector. At the same time, cleaning has a very high share of migrant and foreign workers with 45 % of the employed born abroad, and these workers are in general more vulnerable vis-à-vis the employers (Authors own calculations based on LFS-data). Research suggests that they are less likely to complain about poor wages and working conditions, unsocial hours, and are less likely to join the union, as they fear losing their job, if they complain about their conditions (Refslund, 2016; Larsen et al. 2022). Additionally, there is just a bit higher levels of non-standard employment than for the labour market overall (9,5 % self-employed vs. 6,7,5 %, 1,4 % TAWs compared to 0,9 %) (Authors own calculations based on register data from Statistics Denmark and LFS data).

### Security service activities

Compared to cleaning, security is a much smaller sector in the Danish labour market, with only around 3.634 employed in 2020 (up from 2.764 in 2010) according to data from Eurostat (table 1). However, interviewees from the security workers trade union, VSL, estimates that they cover a sector of around 6.000 workers, indicating that their labour market may be larger than defined by statistical categories (Interviews, The security worker’s union (VSL), 1/22). The sector has consistently been mainly located in the private part of the labour market, but

obviously employed by public authorities via public procurement. There are, however, few exceptions such as city hall custodians that are employed directly by the public authorities. In terms of wages, the sector does not deviate much from the overall labour market, with the median wage being 202 DKK in 2020, which amounted to 98 % of the national median wage. The collective agreement coverage around 80-85 % (Interviews, The security worker's union (VSL), 1/22; The security worker's union (VSL), 10/22) and 65 % of the employed being organized in a trade union are good explanations for this wage level. Thus, the share of low wage workers (gaining less than 66 % of the median) is only 2 % of the employed (Authors' own calculations based on register data from Statistics Denmark, 2020) since the minimum wage stipulated by the collective agreements (164 DKK in 2020) is well above that level. Still, register data shows that 9 % of the security service staff receive wages below the collective agreements minimum rates (Authors' own calculations based on register data from Statistics Denmark, 2020). As security service requires you to be a Danish resident and often also to have language proficiency, there are few non-native workers within the sector.

Due to the low number of people employed in the sector, survey data are unhelpful in giving reliable estimates on the share of non-standard workers in the sector. Interviewees stress that part-time contracts are widespread within security The security worker's union (VSL), 1/22). Many workers also have fixed-term contracts because the public (and probably also many private) customers renew their contract with the suppliers – typically within two to four years (Interviews, The security worker's union (VSL), 1/22). Still, the overall picture is that security is better organised and less prone to protective gaps than cleaning.

## **Protective gaps and challenges and the role of BDW and labour clauses in addressing these**

**Cleaning** has had many cases of precarious work and very low bids on public tenders, which have contributed to the overall discussion and advancing of the use of labour clauses in public procured cleaning activities (Interviews, Local Government Denmark, 1/22; Interview Confederation of Danish Industries, 1/22). Cleaning remains one of the sectors in Denmark most affected by low-wage work, and classic 'hard and dirty' work with a low social prestige ascribed to the job and a high share of migrant workers who more often faced precarious wages and working conditions. There is a significant share of cleaning work done without a collective agreement and hence below the standards set in the collective agreements, but this is mainly in the private sector, as companies working for public authorities are to follow the labour clauses used by nearly all Danish public authorities. These labour clauses typically compel all suppliers providing cleaning services to public authorities to adhere to the standards outlined in the most representative collective agreement within the sector. In the case of cleaning activities, the sector level collective agreement negotiated and signed by the employer association Danish industries (DI) and the trade union United Confederation of Workers in Denmark (3F) is typically considered the most representative collective agreement. Overall, the sector is a setting, where labour clauses can be a highly useful tool to improved potential protection gaps.

The interviewed representative from the trade union representing most of the cleaning sector, 3F (the United Confederation of Workers in Denmark), highlighted that zero-hour contracts (in Danish often termed 'afløser' meaning substitutes<sup>2</sup>) as a problem, since it creates uncertainty for the workers. For example, many on-call

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<sup>2</sup> In Denmark the concept of "afløser" substitute or on-call temps is a specific employment form, where the individual worker is not guaranteed any specific working hours, but are guaranteed minimum 3 hours of paid work per shift.

workers may struggle to accrue rights to sick pay, further training, additional holiday entitlement due to the various eligibility criteria that often require past employment records of between six to nine months with the company, depending on the social benefit under consideration (DI & 3F, 2023). This seems closely aligned with the high use of part-time contracts (one in three within the sector), where the LFS data indicate that roughly a third of these workers work reduced hours involuntary. While the use of zero-hour contracts and part-time work provide flexibility for the companies, it may result in high uncertainty about wages and working hours, which put the workers in a more contingent situation as they depend on the employers to have enough hours. Another example given by the interviewed unionist was that some companies hire the cleaners on a 35-hour contract, where the working hours are then planned, but the company can then ask the workers to stay two hours extra without paying extra for overtime or overtime bonus as this only starts when workers work longer than 37 hours per week. This practice provides the company with a lot of flexibility, but without having to pay extra in terms of overtime- payment or bonuses.

A general theme mentioned by both the employer's association and the union in cleaning was the quality of the public tenders, which they described as too low in general (Interviews, Confederation of Danish Industries, 1/22; 3F private services, 1/22). This results in too high work tempo and cleaning rates, where the worker must clean overly larger areas compared to the time assigned to it, which in turns makes the work harder and riskier for the worker. This resulted in, according to the employer's association representative, that some companies abstained from bidding on public tenders, leaving it to companies with a low-wage competition approach to bid on public tenders, which was described as less respected among the cleaning companies in the employer's association (Interview Confederation of Danish Industries, 1/22). Finally, an important issue mentioned in the interviews was migrant workers being under-paid through various forms of circumventions of the collective agreements. The migrant workers are often unaware of their rights or simply accept to work below collective agreed labour standards. There have been substantial problems with migrant workers' wages and working conditions in the last decade, where the use of subcontractors (typically hiring migrant workers) have been a major issue in public procured cleaning (Rasmussen et al., 2016; Refslund, 2016). However according to the interviewees, these problems have decreased significantly, and the use of labour clauses is highlighted as an important factor in explaining this development (Interviews Confederation of Danish Industries, 1/22; 3F private services, 1/22). However, a recent large scale Danish survey among low wage workers including cleaners indicate that many subcontracted workers often work without an employment contract, work many hours of unpaid work on a weekly basis and experience restricted if any access to overtime payment, unsocial hours allowance and other social benefits (Larsen et al., 2022; Larsen and Ilsøe, 2023).

Turning to **security service** some of the protective gaps mentioned by the interviewees was the widespread usage of part-time contracts and the uncertainty surrounding the working hours and time (Interviews, The security worker's union (VSL), 1/22). As the contract for supplying the security service would often be short-term, some worker's employment contract follows these terms, with employment contracts expiring and getting renewed frequently. This is causing uncertainty regarding employment security. Interviewees also mentioned problems with breaks that are not taken, although agreed upon within the collective agreement. Hence, the security service workers may work very long shifts without having their required breaks. Moreover, a representation gap was mentioned in the interviews, with security service work often done alone and/or without

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Employers can use this employment form when permanent staff falls ill, takes vacation or in case of other forms of absence including when new positions are to be renewed. The collective agreed labour standards apply also to this group of workers, and they have the right to a permanent open-ended contract after 6 months employment with the company (DI and 3F, 2023§7).

meeting the colleagues and accordingly there are also few elected shop stewards in the sector. Finally, the interviewed unionist in the security service sector emphasised the actual need for controlling and enforcing the labour clauses as a challenge that should be addressed. The awareness of labour clauses has recently been raised by a prominent case, where a company providing security service for central Danish government institutions, including the Danish Parliament, had had cases of non-compliance with the labour clauses. The company tried among others to set wages using different collective agreement than the most representative one signed by VSL and DI (see CASE STUDY DK-2 below for more information).

## **Potential role of Buying Decent work (BDW) policies and practices**

Currently in Denmark, the issue of Buying Decent Work (BDW) mainly revolves around the application and implementation of labour clauses. Generally, the application of labour clauses is aiming to secure and improve the wages and working conditions, often, but not always, involving migrant workers that work for very low wages in for instance public procured cleaning and in public construction projects. The main focus is typically on the construction sector, where the widespread use of numerous suppliers and staffing agencies often blurs the chain of suppliers, which makes it very difficult for the unions to address low wages and poor working conditions often described under the broad heading of social dumping. Similar tendencies can be found in cleaning. This is especially problematic when it is combined with low unionisation rates for migrant workers and often low levels of engagement and dialogue between unions, migrant workers and foreign companies/suppliers.

Since there is no statutory minimum wage or any form of legal extension of collective agreements in Denmark, the labour clauses are used to ensure that suppliers of public procured work provide wages and working conditions similar to those defined by the most representative collective agreements within the industry. Obviously, there is a more significant effect, if the application of the labour clauses is controlled and enforced. It is not a requirement that the supplying companies sign a collective agreement, which implies that trade unions often cannot use the labour clause for litigation in cases of violations. Instead, it is the public authority procuring the services that has to enforce the labour clause standards. This is considered somewhat problematic and tends to spark regulatory tensions as it is the public authority, not the social partners themselves that will interpret and assess whether there have been violations of their collective agreements according to the interviewees (Information from stakeholder workshop). On the other hand, the labour clauses provide the trade unions with a better starting point, since they do not have to enact industrial actions to get the companies to sign a collective agreement, but can rather focus on the working conditions directly.

Looking specifically at security service the situation is a bit different, as the workforce is mainly Danish citizens and the collective agreement coverage is high within the industry. There is an authorisation program in the sector that require certain language skills and residence in Denmark. Accordingly, the social dumping agenda involving underpaid foreign workers is less relevant here. The issues related to BDW therefore relates to other aspects than migrant work, mainly working hours – planning, number, and unsocial working hours and not least overtime payment, which are important issues for the trade union (VSL) in the industry.

Some of the interviewees also raised the issue of how to improve the dialogue between the suppliers and procuring units, for instance, over what wages and working conditions the supplier is expected to pay and how to handle breaches, problems and issues related to interpretation of the collective agreements (Interview Agency for Public Finance and Management, 10/22).

Overall, the assessment of interviewees from security services and cleaning is that the labour clauses have helped improve working conditions, and the use of labour clause can potentially continue to play a key role in securing decent wage and working conditions in the years to come. Therefore, there is a need to develop the labour clauses further, and an example of a more advanced application of labour clauses is the specification of wages, terms and conditions in the labour clauses referring to the collective agreement (see *CASE STUDY DK-2* below on appendix 1A-I).

**Table 2 Overview Table: Setting, extending and enforcing standards**

CORE QUESTIONS	SETTING STANDARDS	EXTENDING STANDARDS	ENFORCING STANDARDS
<b>1) most important protective gaps</b>	Zero-hour contracts, part-time work, short-term contracts	Representation gaps: fewer shop stewards and worker reps and CA-coverage lower than general average for Danish labour market	Low-wage work, Lack of overtime payment and unsocial hours allowance
<b>2) General Policies and efforts to diminish these gaps (apart from. BDW)</b>		High coverage rate by collective agreements (particularly in security service)	Joint inspection of social dumping with tax, police and work environment authorities
<b>3) Potential role of BDW to diminish the gaps?</b>	Labour clauses do not set standards, but require standards set by CA in all Danish cases, hence de facto setting collective agreements level standards for public procured work	Facilitating the application of CA standards for supplying companies without a CA  Ensure CA standards for public procured work	Control and enforcement of labour clauses through specialised enforcement units  The work of specific control units for public contracts can alleviate the enforcement demand on trade unions by working to detect and sanction cases of non-compliance with CA standards

## Part TWO: Policy developments relevant for BDW

### Policy and legislative changes on BDW since 2014

Wiesbrock (2016) argues that the lack of *mandatory* provisions for social and environmental concerns in European procurement legislation means that most public procurers shy away from utilising the opportunities for a more comprehensive approach in BDW. The conclusion here in our report is that this is also reflected to some extent in the Danish use of public procurement for securing decent work, although with some notable exceptions. For instance, we argue that there is an increasing awareness in Denmark on social goals in public procurement covering also further training, apprenticeships, UN's 10 principles for Corporate social responsibility, environmental concerns etc. Moreover, the number of municipalities that apply labour clauses in their public procurement has increased from 51 % in 2017 to 85 % in 2021 (3F, 2017; 2021).

The revised Procurement directive of 2014 has only had a minor impact in Denmark in terms of BDW and labour clauses. The directive was first implemented in 2016 with the Danish public procurement law, and later some, mainly technical changes to the Danish Procurement law, were made in 2020 to align with the Directive<sup>3</sup>. **The 2014 updated circular [cirkulære] (which was originally from 1966 to align with ILO convention 94), remains the key Danish legislation on labour clauses.** However, **a 2022 revision of the Danish procurement law resulted in more substantial changes to Danish procurement legislation**<sup>4</sup>. For example, the practice of having joint inspections and control units on labour clauses across administrative units was made explicitly lawful. Nevertheless, despite initial high hopes in the trade union movement for significant improvements on labour clauses, these did not form part of the 2022 update of the law. This was partly due to an ongoing corporative working group with representatives from the employer's associations, the trade unions and the central government agencies, where the involved partners discussed in greater detail the usage of labour clauses (interviews, Danish Trade Union Confederation, 12/22; Confederation of Danish Industries, 1/22). This work was delayed due to the national election in the fall of 2022, and at the time of writing, it remains uncertain what will be the result of the corporatist committee work.

While the legislative setting around labour clauses and BDW has not been changed substantially since 2014, it appears from the collected empirical data that the use and application of labour clauses has become more generally accepted and understood as an integral part of public procurement for both the public buyers and the companies supplying these goods and services. A quote from one of the interviews (representing the municipal's organisation KL) illustrates the general acceptance very well, despite the fact that it remains optional for the municipalities to apply labour clauses in their public procurement:

***"First of all, there is not really anyone who is against it [labour clauses], and you can ask yourself whether it is not almost a basic requirement in Denmark, no matter what."***

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<sup>3</sup> <https://www.bechbruun.com/da/nyheder/2020/udbudsloven-ndret-pr-1-januar-2020>

<sup>4</sup> <https://www.kfst.dk/udbud/udbudsregler/aendringer-af-udbudsloven/>

The big issue is not whether public authorities want to use labour clauses, but what they will do to ensure that the content of those clauses is on par with content of the most representative collective agreements, and what they will do to control and enforce the labour clauses.

## **Lacking professionalisation of the field of BDW**

A key issue raised by most of the interviewed actors is the lack of professionalisation by most public buyers regarding BDW and labour clauses. Typically, the conditions set by the labour clauses are not very clearly specified and merely reflects the general wording of the legislation or a standard form of labour clause addendum. For example, the labour clauses used by Odense municipality stipulates:

*“The private contractor is obliged to ensure that the employees that the contractor and potential subcontractors employ in Denmark to carry out the task, have wages (including specific allowances) and working conditions that are not less favourable than the wage and working conditions that apply for work of similar nature according to the collective agreement signed by the most representative social partners within the particular occupational areas in Denmark” (Odense Municipality, 2023).*

While this may be better than not having a labour clause altogether, it can be difficult for supplying companies that are not member of an employers’ association, to figure out which conditions they are obliged to follow (Interviews, Confederation of Danish Industries, 1/22; The security worker’s union (VSL), 1/22). Moreover, the less specific a labour clause is on the conditions and wages to be provided to the workers (for instance wage calculations), the more difficult it becomes to control and ultimately sanction potential violations of the labour clauses (see CASE STUDY DK-1 below).

There have been advances towards professionalising the control function (including the sanctioning breaches) across Danish public authorities. Some municipalities have been spearheading this development in particular Odense municipality and Copenhagen municipality (for further information see CASE STUDY DK-3 and DK-4 below and on the Copenhagen case see also Jaehrling et al. (2018)). The larger municipalities have the advantages of economies of scale, as they appear more capable of applying the labour clauses in their contracts as well as conducting control and enforcing the labour clauses (Interview, Local Government Denmark, 1/22). However, the development towards increasing enforcement is also partly political driven with the social democratic and left-wing parties in general being more attentive to ensuring the enforcement of labour clauses. But a counterargument made by some of the interviewed experts is that the smaller municipalities tend to have a closer relation with their suppliers, making it is easier to solve compliance issues on an operational level, as well as discover potential problems with the supplying companies’ compliance with the labour clauses (Interview, Local government Denmark, 1/22). To increase the efficiency of the labour clauses at state-level, (but initiated by strong critique from the State Auditors), the social democratic government set up a control unit to inspect the compliance with the labour clauses in public work in 2020. The joint control unit covers several key sectors such as construction, cleaning and more broadly facility management, as well as security work (see CASE STUDY DK-1 below).

Despite these advances in term of improving the enforcement, there is a lack of professionalisation or at least attention and systematic approach devoted to sanctioning breaches of the labour clauses. Many public procurers handle the task of both ensuring the quality, timeliness, and all other contractual issues on public contracts.

Therefore, BDW are often not prioritised, and it can be very difficult for the contract administrators to figure out if the labour clauses have actually been violated, in particular, if it is not very clearly stated what is expected from the suppliers. Moreover, the supplier companies may disagree with the arguments put forward by a control unit or by the trade union, and hence the public contract administrator needs to act as a sort of labour market judge, something they may have limited - if any - expertise to do. In an interview conducted for another research project, the contract administration on a large construction site of a new bridge saw the issues related to the labour clauses as potentially troublesome and potentially delaying the project. Thus, concerns over wages and working conditions based on the labour clauses were mainly considered as bureaucratic issues causing delays, and thus diverging the project managers from achieving their main goal of completing the construction of the bridge.

Another overall issue causing problems with public procurement *may be* that the tenders and the labour clauses in general are mainly written by administrative employees with a legal background and lawyers mainly trained in procurement law and not in how to include BDW in public tenders. An illustrative example on how social concerns are not prioritised comes from one of the main books in Danish for teaching public procurement law (Hamer, 2021) where environmental and social goals of public procurement is lumped in a single chapter towards the end of the book under the broad heading 'secondary considerations'. There are online resources such as the homepage 'The responsible Procurer' (Den ansvarlige indkøber), which has been launched in 2013 in a collaboration between various Danish public authorities. The homepage provides guidelines and inspiration for public procurers on how to include social and environmental goals in the public tenders, but with much emphasis on environmental sustainability. However, the uptake of such online information material remains uncertain, and it may very well be only the most proactive public procurers, who search for such information.

When the actual labour clauses applied are highly generic or based on standard formulations and where there is limited if any no control mechanisms in place, BDW becomes mainly symbolic without any genuine impact on wages and working conditions. BDW and labour clauses seems to suffer from being stuck between different fields with different dominant logics, in particular a cost efficacy logic of public procurement and a price competition logic in the market, leaving little or no room for consideration on sustainability and BDW. Likewise, the aforementioned example of the construction project of the bridge points to another logic, where completing the project in due time along with ensuring high efficiency in public procured services and work outweigh the aim of protecting wage and working conditions through labour clauses. These different logics are reinforced by the absence of professional actors in the local procurement process, who perceive BDW as the main subject in public procurement (or at least a highly important one). While there is public attention and most likely the needed legal leeway to do so, it appears that the will (or perhaps awareness) of public procurers to set social and environmental goals on par with economic ones are quite limited. For some public procurers, it is clear that the potential for applying social clauses (for instance through labour clauses) is not utilised as it is judicial challenging, and the public procurer tend to be more concerned about issues on non-discrimination and competition than social concerns (Wiesbrock, 2016). **So it may very well be a matter of professionalisation of BDW and more broadly sustainable public procurement that is a key element in enhancing the attention devoted to BDW** (see also Andhov et al., 2020; Andrecka, 2017: 339).



## Interplay between collective agreements and procurement-specific provisions

The interplay between the collective agreements and the labour clauses is a key concern to the interviewed actors: *“The labour clauses do not reflect the Danish model [of industrial relations]”*, as stated by the employer’s association representative (Interview Confederation of Danish Industries, 1/22). A core issue concerns the ‘ownership’ of the labour clauses. Formally labour clauses belongs to the public procurers as part of the contract, but the labour market actors define the standards set by the labour clauses through their CAs and particularly the unions have a strong interest in the enforcement of the labour clauses. However, the social partners are not formally a part of the contractual agreement between the supplier and the public procurer. This has caused some troubles. The security workers union (VSL) for instance are often told *‘that they [the union] are not a [legal] part of the case, and can therefore not act in the case’*, when they confront the public buyers with potential breaches (Interviews, The security worker’s union (VSL), 1/22).

In general, the procurement specific provisions specified in Danish legislation and in the social/labour clauses themselves refer to the general and *most representative national* collective agreement in the specific sector. This may look like a de facto legal extension of the collective agreement to the public procured work in the sense that the suppliers are legally obliged to adhere to the wages and working conditions that are equal to those in the collective agreement. This is even more so the case within security services, since an appendix to the labour clauses (Appendix 1A-I, see CASE STUDY DK-2) explicitly specifies 17 terms from the industry collective agreement, that suppliers must adhere to. These 17 terms are more detailed than the general wording of “terms equal to” the conditions. Still it is important to remember, that the supplying companies are not obliged to sign a collective agreements, only to adhere to the conditions set by the collective agreements and potentially specified in the labour clause.

Moreover, there are an important difference from a legal extension of traditional collective agreements as the terms set in the collective agreement only apply to supplying companies that successfully have signed a public procurement contract and not the entire sector, which tend to be the case when collective agreements are legally extended within particular sectors (Calavia et al., 2020; Hayter and Visser, 2018). In this context, the interviewees also emphasised a reoccurring problem that it is unclear what the suppliers are expected to adhere to, as it is typically not specified in the labour clause (but one way forward may be to improve this by specifying the conditions as illustrated in CASE STUDY DK-2 below).

A second major difference of the use of labour clauses to a legal extension or the signing of a collective agreement is that the role of the trade union and employers’ organisations becomes somewhat ambiguous, since they do not ‘own’ the labour clauses like they own the collective agreement. The supplying companies are as mentioned not obliged to sign a collective agreement, but only to adhere to the conditions in these. Nevertheless, the social partners, especially the trade unions continue to have a clear interest in ensuring the enforcement of the labour clause and ultimately in upholding the standards defined by their collective agreements. However, it appears to become a sort of an odd job for the social partners to help interpret the collective agreements without being a legal part. Unlike, their typical role when there are legal violations of the collective agreements, trade unions cannot carry out controls or litigations based on labour clauses, nor can they obtain any of the procedural benefits normally derived from collective agreements (such as the fines companies pay for violating collective agreements – as distinct from the payments companies make to compensate workers for underpayment). There is also the important difference: that the labour market actors (in particular the unions) in many cases are not very close to the companies and workers in question, which renders the labour clauses much more vulnerable

for non-compliance than the traditional collective agreements. The same issues exist when there is a collective agreement, but without any active members, for instance, when there are many foreign workers (Interviews, The security worker's union (VSL), 1/22; 3F construction, 1/22; 3F private services, 1/22). In an effective enforcement of the collective agreement (and hence also the labour clauses) the unions depend on members to provide them information about wages and working conditions in the companies. Particularly when the issues revolve around migrant workers, for instance, in construction and cleaning, where it is very difficult for the public authorities and their potential control/inspection units to get any information out of the workers (see the case studies below). To get the (migrant) workers to cooperate is a lengthy process of establishing trust before the migrant workers open up to talk about potential breaches (Refslund, 2021; Arnholtz and Andersen, 2018).

As stated, **the Danish legislation refer to the general and *most representative national collective agreements*, as do the standard labour clauses, wherefore the term "*the most representative national collective agreement*" (which suppliers are obliged to follow) have become pivotal in public procurement labour law.** However, the term *most representative national collective agreements* was invented<sup>5</sup> for the amendment of the law on posted workers following the Laval-ruling, and has been applied broadly in Danish legislation since the original introduction in 2008 (Nielsen, 2022: 387-391). Despite a with-spread use it remains somewhat unclear – at least judicial – what is understood by "*most representative*" as argued by Nielsen (2022), in his dissertation, which is the most comprehensive assessment of the labour clauses in Danish labour law. This uncertainty leaves some room for testing or challenging (politically) the representativeness claim. Nevertheless, there is some guidance in the legislation in particular in the recital for the Danish law on temporary agency workers (Vikarloven). Here, it is stated that the most representative organisations must represent 'a substantial proportion of workers in the trade or industry', for organisations to be the most representative as well as a certain proportion of the sector is to be covered by the specific collective agreement in question. This combines with the claim for a collective agreement to be national in scope: for the collective agreements to be recognised as a national and "widespread" it must have some scope. Finally, the demand in the labour clauses that the conditions must match the working conditions for *the specific type of work*<sup>6</sup> rules out references to the more broad, cross-industry collective agreements. Ultimately, it will be up to civil courts to interpret the representativeness claim (also explicitly reflected in the recital, for instance, to temporary agency work). In some sectors, it may be uncertain, which collective agreement the labour clause refers to. This is, for instance, the case within cleaning, as there are more than one collective agreement that could be considered the most the "representative" collective agreement. Therefore, it can be problematic, if the labour clauses fail to specify in greater detail what collective agreement the provider is expected to adhere to (Interviews, Confederation of Danish Industries, 1/22; The security worker's union (VSL), 1/22; 3F private services, 1/22). In some sectors or industries, it is nearly impossible to identify the 'most representative collective agreement', for instance in academic consultant work, where no general (private sector) agreement exists. Instead, there are numerous agreements covering certain professions or occupational groups.

It is challenging that the labour clauses refer to a collective agreement, which is the ongoing outcome of a long, historical process of negotiating, interpreting and enforcing this agreement between the signatory partners, since the public buyer and the provider in some case have to interpret and follow up on this. Both the employers' association representatives and the trade union representatives interviewed articulated this in the interviews

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<sup>5</sup> The ILO94 rather use the terms "... established for work of the same character in the trade or industry concerned in the district, where the work is carried on", which provides a different perspective and starting point.

<sup>6</sup> §3 in the Circular on labour clauses states: "...inden for det pågældende faglige område (within the relevant trade).

where they considered it problematic that someone, who is unfamiliar with the collective agreement has to figure out how to interpret it in real life.

*... it is not such an either-or interpretation [of the collective agreement/labour clause], so it requires some kind of expertise that can be difficult to achieve (interview, Local government Denmark, 1/22).*

A legal link between the labour clause (as a contract) and the collective agreements is also missing. So in a case, where a company breaches the collective agreement and is found guilty of the breach in the labour court / arbitration system (fagretlige system), this does not solve the potential breach of the labour clause. Firstly, the ruling from the labour court/arbitration system is not automatically transferable to the contract between the public authority and the supplying company (and hence the labour clause), as this is a contract matter to be solved in a regular court. Moreover, and importantly, the rights in the arbitration system are collective in Denmark, whereas the labour clauses tend to specify the rights of the single worker. This means that if a company is found guilty in the labour court of breaching, for instance, working time regulation, the unionised workers are compensated, while the penance for the non-unionised workers goes to the union as the collective actor, whose rights (the collective agreement) have been breached. This would not work in the case of the labour clause, since it specifies that the workers should be paid according to the collective agreements (and therefore does not mention the union). This may produce some further issues, for instance if a supplier is penalised in the labour court for breaching the collective agreement, this does not cover the labour clause. Therefore, the public procurer must also sanction the supplier if they find that the labour clause is breached as well, but it is up to the individual public authority to assess if there has been a breach of their labour clauses and subsequently sanction the suppliers (e.g. require the company to pay outstanding wages to their workers, under threat of contractual sanctions). If the supplying company disagrees it is to be solved in the regular courts, as it is a contractual issue. This means that suppliers can potentially face a 'double financial punishment', which is problematic as the two systems do not interact. Ultimately, this may (at least in theory) result in the suppliers abstaining from signing a collective agreement, which in turn undermines the very same 'Danish industrial relations model' the labour clauses are supposed to support the endurance and functionality of. One way of better integrating the collective agreement systems and the labour clauses would be to find a solution, where these matters are solved in a more efficient manner, with a better coordination between the two types of regulations, to avoid direct conflicts. Requiring suppliers to actually sign the most representative collective agreement in the industry would be one way of avoiding many of these problems, but that is prevented by EU law.

Signing a collective agreement is nevertheless an easy way for the supplier to signal that they are playing by the books, and some public buyers most definitely prefer that, although they cannot state it officially. Moreover, when the supplier signs a collective agreement the control and sanctioning formally resides with the union as a legal part of the collective agreement, although this does not mean that the procurer can neglect breaches or avoid enforcing the labour clause. However, as stated above this may also cause problems with 'double punishment', which may de facto end up deterring companies (perhaps in particular foreign companies) from signing a collective agreement.

All the interviewed actors acknowledge the important role of labour clauses in complementing the collective bargaining system. However, they also stress the prominence of the bargaining system over political initiated regulation such as labour clauses. Yet, one reason why labour clauses have become important has been the growth of social dumping and precarious work in public procured work in Denmark which has been emphasised in various media stories and large-scale research projects (Arnholtz and Refslund, 2019; Rasmussen et al., 2016;

Jaehrling et al., 2018; Larsen et al., 2020; Arnholtz and Andersen, 2018). Something the unions have struggled to handle, for instance, in cleaning and in some public construction projects, particularly when most of the work is done by migrant workers. In that sense the labour clauses do also have an element of compensatory role, where the labour clauses in some cases are to compensate for the lack of regulation in particular in companies and worksites dominated by foreign labour. Labour clauses are seen by the interviewed actors as potentially improving social partners' ability to improve wages and working conditions. The interviewed representative from the employer's association emphasised how the labour clauses can help establish 'a level playing field' for the companies in the sector bidding for public work, for instance, cleaning task and facility management (which often include security services) (Interview Confederation of Danish Industries, 1/22).

## The core issue of control and sanctions

Within the last decade, labour clauses have moved higher on the political agenda, in particular following somewhat heated public debates about social dumping, which relates to migrant workers including their working conditions when working on public procured work. According to the interviewed representatives from the municipalities' organisation (KL, Local Government Denmark) an internal survey in 2014-15 indicated half of the municipalities applied labour clauses while a recent survey by the union 3F showed that around 85 per cent of the municipalities applied labour clauses in 2021 (3F, 2021). **However, the main issue about labour clauses is not the application,** (although the legislation could still be clearer on the potential of including social goals in public procurement cf. Andhov et al., 2020). **Rather the main issue relates to the enforcement of the labour clauses in Danish public procurement,** and this concerns the entire process of BDW from tenders to contract negotiations, but especially post-contract award enforcement through controlling and sanctioning violations.

Controlling the labour clauses is a time-consuming task, which requires much expertise, know-how and experience. Normally in the Danish industrial relations systems, this task is handled by the unions, who over the years have built up an encompassing and resourceful system of local branches, union officials and shop stewards and not least members in most Danish workplaces. Transferring this enforcement task to units in the public administration is not easily done. Nevertheless, there are some examples of very well-functioning control units that have the necessary competences to conduct a high-level control and take the right sanction measures. The ones mentioned by our interviewees are Copenhagen municipality, Odense municipality, and the Danish National Task Force for Labour Clauses (see case studies A, C and D below). One important aspect seems to be that these units utilise risk-based inspections, where inspections are targeted to subsectors or companies that are more likely to violate the labour clauses. The risk assessments are based on a range of factors, previous experiences and in some case even a systematic registration of which companies cause problems. The risk-based controls typically yield a high hit rate for the inspections. For instance of 240 controls in the cleaning sector in 2020, the control unit in Copenhagen municipality found breaches in 232 cases<sup>7</sup>. At the same time, doing a risk-based control requires accumulated experience within the unit. Copenhagen municipality has a thorough and professional control unit, yet they still find many issues (although many of these are only minor and may rather reflect errors and misunderstandings than deliberate attempts to circumvent the labour clauses). This indicates

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<sup>7</sup> <https://fagbladet3f.dk/artikel/det-er-grotesk>

that there are most likely also issues in the many municipalities and other public authorities that do not have any systematic control in place.

A problem for the enforcement may be that it can be problematic to sanction companies that are violating the labour clauses. **Many public authorities are more concerned about the free competition and the risk of unlawful sanctions, which reduces the effectiveness of the labour clauses and lowers enforcement.** Instead, Danish public authorities typically apply a dialogue-based enforcement approach, where they through dialogue with the supplier seek to address the potential breaches, but they also apply financial and economic sanctions for suppliers violating the labour clause – see for example the different case studies included below. But, we have for instance not come across cases, where the contract had been terminated due to breaches of the labour clauses in the case of cleaning and security services, but in the area of food delivery, the Municipality of Copenhagen terminated their contract with the online e-commerce platform nemlig-com due to violations of the labour clause a few years back. In sum, it is very rare that a contract with a supplier is terminated over issues of CSR and decent work (Andrecka, 2017). Additionally certain companies were according to the interviewed unionists (Interviews, The security worker's union (VSL), 1/22) deliberately not playing by the books, and seemed to strategically just anticipate being economically sanctioned occasionally, but still earning a large or more profitable revenue from circumventing the labour clause (i.e. the standard set by the collective agreement). Public authorities often have problems excluding such companies from the tender process and may thus end up re-hiring suppliers that have a history of violating the labour clauses.

## **BDW is still affected by uncertainty**

Despite possibilities for including social and environmental goals under the public procurement directive 2014/24/EU, the legal uncertainty related to balancing demands for free competition and equal treatment in combination with the lack of mandatory as well as clear and specific requirements for sustainability in the Directive as well as the Danish public procurement law have meant that most public authorities shy away from using public procurement to achieve broader societal goals. Moreover, **it means that social goals are typically subdued the economic and quality demands in the public tenders.** It is, for instance, uncertain when a bidder can be excluded because of very low prices, which often implies that it is difficult to pay a collective bargained wage. But the use of labour clauses has attracted increased awareness among public procurers regarding BDW and social sustainable public procurement which contributes to secure attention and a certain level of BDW, which however is highly dependent on the enforcement. Both the interviewed employer's association's representatives and the union representatives emphasise **the problems caused by many public buyers continue to look mainly for the cheapest price when they choose a supplier.** In general, there seems to be uncertainties in assessing the most economically advantageous tender in much public procurement. This problem seems to be particularly outspoken in cleaning and security services. These two tasks continue to some degree to be seen as work *'that just have to be done'*, meaning that the public buyers emphasise price over quality and also over BDW principles and working conditions. The interviewed employer's association representative illustrated this with an example, where a municipality ran into problems with the working conditions of public cleaners, and the mayor stated in the local media, that it *"was just cleaning"* (Interview Confederation of Danish Industries, 1/22). So, the two sectors under scrutiny need some more political prioritisation according to the interviewees, before the labour clauses can 'solve' the issues found in the sectors regarding wages and working conditions.

Here the main issues relate to the low degree of details in many labour clauses, the lack of control and sanctions resulting in low compliance and finally that too many public buyers still only focus on the price rather than other measures. The latter may also reflect the educational background and training of many public buyers, where emphasis on competition law and tender procedures means that the free competition and fear of violating competition law overshadows the potential for BDW. **The same tendency to neglect BDW over competition law and tender procedures also seem to be reflected in the additional training available to public buyers, where none or little attention is devoted to using public procurement to achieve social goals**, which was indicated by some of the interviewees. So a way to address the legal uncertainty and at the same time improve professionalisation would be to put more emphasis on social goals and labour clauses in both formal and additional training for public procurers.

## Concluding discussion

Overall, the uptake and application of labour clauses have increased in recent years with labour clauses having moved from having very low relevance (before 2014) to being high on the political agenda in the last decade or so. There is now a widespread use of labour clauses, all state authorities are obliged by the legislation to apply a labour clause (with chain liability), and most regional and municipal actors apply labour clauses as well despite it being optional. The update of the Danish legislation on labour clauses in 2014 was important for the change in attention devoted to labour clauses (Jaehrling et al., 2018). The union movement's efforts to put social dumping – in particular in relation to Eastern and Central European workers – high on the political agenda, is also an important part of the explanation of the increasing importance of labour clauses in Danish politics and the Danish labour market. The increased application of labour clauses can be said to have a preventive effect on the bidders and suppliers' compliance with normal labour standard (set in the collective agreements) for these types of work in Denmark and hence contributing to BDW. Nevertheless, this does not remove all issues of non-compliance in public supply chains and public procurement. Many of the problems with non-compliance of labour clauses to some extent reflect the union movement's problems with non-compliance and enforcing the traditional "Danish model of industrial relations" in particular among migrant workers in for instance public procured cleaning work. Thus, the interplay between the labour clauses and the collective agreements has not been matured and the strong emphasis on labour clauses and BDW does challenge the traditional model of regulation, and can be said to be in a watershed as to whether the labour clause will be complementing or substituting the traditional model of regulation led by strong unions.

The majority of the current problems in regards to BDW relates to the control and sanctioning of the labour clauses (Andrecka, 2017), although there are some examples of a more advanced enforcement. Only recently in 2020 did the national state authorities start to control their labour clauses. In some cases, there are no genuine control mechanisms for instance in many municipalities. Overall, the enforcement procedure is still highly fragmented and as the task of controlling and sanctioning is complex, it can be difficult for public procurers to handle. So, when a control unit makes a report on non-compliance with the labour clause (or if third party actors like unions point towards problems), it may be very difficult for the public buyer/public procurement manager to handle as the labour clauses are just one dimension of contract management. These issues may be furthered by some labour clauses being very generic, making it difficult to assess if there has been any breaches and the actual calculations based on a collective agreement can be very difficult to do and require a high level of expertise. There are examples of very well-functioning labour clauses, but often there is a need for better specifications and clearer demands in the labour clauses. Yet, the overall quality of labour clauses seems to be

improving and may suggest an emerging professionalisation of the field of labour clauses and public procurement in BDW. For instance, some of our interviewees indicated that they see some changes towards quality becoming more important with a better and more integrated cooperation between the public buyers and the suppliers (interviews, Agency for Public Finance and Management, 10/22; 3F private services, 1/22).

**However, many public procurement officers are still more concerned with ensuring free competition and avoid setting demands that are in (potential) conflict with the procurement regulation than with promoting the social goals,** according to several of our interviewees from trade unions and employers' associations participating in our national stakeholder workshop. **Here, the legal uncertainty and the lack of mandatory requirements, for instance specifying the terms, in the public procurement regulation is making these issues graver.** Moreover, many public buyers still mainly look at the price when choosing the suppliers, and the lowest price often prevails in cleaning and security services, as these two sectors are political 'low-priority' according to our interviewees, and have less political attention than construction (interviews, Confederation of Danish Industries, 1/22; The security worker's union (VSL), 1/22; 3F private services, 1/22). This result in public procured work is not very high on the agenda for many companies in these sectors and seen as low-prestige work (Interview Confederation of Danish Industries, 1/22).

## Part THREE: Case studies

### ***CASE STUDY DK-1: Danish National Task Force for Labour Clauses***

#### **Objectives**

As argued elsewhere in this report, the focus in Denmark has shifted from a discussion about whether labour clauses are needed or not to a discussion of how the labour clauses become an effective measure to reduce low wages and poor working conditions in public procured work. It is mandatory for state level authorities in Denmark to apply labour clauses, and the 2014 legislation further specifies that the public authorities must also control and sanction the labour clauses (BEK, §7). However up until 2020 there was no systematic control of labour clauses among the state-level authorities. This meant that many state authorities did neither control nor sanction potential breaches of labour clauses. To improve this, a national task force (or control unit in Danish) was established in 2020 with the task to inspect whether the supplying companies (and not least their subcontractors) comply with the labour clauses.

#### **Situation before the experimentation**

The lacking control (and hence also sanctioning) of labour clauses by state authorities led to a strong critique from the 'State Auditors' in 2020. The State Auditors (Statsrevisorerne) are six politically appointed auditors, who since the first democratic constitution of Denmark (Grundloven in 1849) have been tasked with inspecting whether the State uses the public funds in an appropriate and meaningful manner. If they find problematic issues, they will report these to the Parliament (Folketinget) and the relevant ministries. In the report on labour clauses (Rigsrevisionen og Statsrevisorerne, 2020), the State Auditors concluded: *"The State does not have a satisfactory use of and control over labour clauses when the ministries sign contracts with private suppliers. The consequence is that there may occur poor pay and working conditions as well as unequal competition for services that the State pays for"* (Rigsrevisionen og Statsrevisorerne, 2020: 3). Shortly after the report was published, it was publicly announced that the new national task force (hereafter control unit) would be established during 2020 with a temporary funding until the end of 2023 and it would be placed administratively under the Danish Road Directorate.

#### **Origins of the experimentation**

While there has been a general political development in Denmark towards embracing labour clauses, and this has led to several political initiatives to control, enforce and sanction the labour clauses for instance in municipalities, where it remains voluntary to apply labour clauses (Jaehrling et al., 2018), the definite push for the formation of the Danish National Task Force for Labour Clauses came from the critique raised by the State Auditors. However, there had been an increasing awareness (both publicly and politically) on labour clauses and on working conditions for workers performing public procured work, where the experience of some of the most advanced control and sanction mechanisms in place such as the control units in Odense municipality and Copenhagen municipality showed the effect and relevance of control mechanisms. Moreover, the experiences revealed that there are enduring problems with wages and working conditions in public procured work, in particular for migrant workers, but also native workers. This caused some media attention, for instance, in the



public procurement of security services, where it also became a political issue<sup>8</sup>, since security services workers were conducting security checks, for instance, in the Danish Parliament. All of this increased the attention on labour clauses and underlined the lack of control and enforcement by most state authorities as pointed to by the State Auditor's report (Rigsrevisionen og Statsrevisorerne, 2020). Yet, the 2014 legislation is also an important prerequisite as it specifies the control and enforcement as a legal obligation for the state authorities.

### **Actors involved and strategies and resources**

Administratively, the control unit is part of the Danish Road Directorate and is located in two geographical sites, one site in the Western part and one site in the Eastern part of Denmark. In total, there are currently around 10 employees conducting inspections. The control unit inspects public procurement contracts for four state authorities: The Agency for Public Finance and Management - Ministry of Finance, The Danish Road Directorate (VD), Danish Building and Property Agency (BST) and BaneDanmark (public railways) along with public procurement contracts within the State's framework agreement for public purchases (SKI, Statens Indkøbsprogram). The control unit mainly conducts unannounced inspections on-site, but part of the control procedure is to prepare and document the inspections as well as select the companies and worksites to inspect. Once they are on-site, they try to engage as much as possible with the workers present. The control unit does not have any authority to sanction the providers but based on their inspection and the documentation delivered by the companies they produce a report for the procuring unit to make a decision. It is then up to the procuring unit to decide how to proceed. Once the procuring unit receives the report from the control unit, they typically ask the supplying company under scrutiny for a response. Many problems are caused by mistakes or misunderstandings, which are then solved without further complications (Interview Agency for Public Finance and Management, 10/22). But in some instances, the problems are more severe, and the suppliers must pay a penance to the procuring unit (as well as potentially missing wages or payment to the workers). In very far-reaching cases or when there are repetitive cases the contract can be terminated, however we have not heard of any such examples of termination of the contract during our empirical studies.

The decision on what contracts, and hence sites to inspect is based on a risk assessment. The risk assessment is based on a list of criteria. These include for example sector, type of work, the labour process, share of migrant, temporary and posted workers, the skill level required for the job, low prices, the use of sub-suppliers (contracts with longer supply chains/higher number of sub-suppliers are typically more prone to precarious work), potential bogus self-employment as well as previous breaches (Danish National Task Force for Labour Clauses, n.d-a). The control unit additionally has a 'hot line', where tips about potential breaches can be given. According to the interviewees they have only received few calls about potential problematic working conditions, roughly less than one per week (Interviews, Danish National Task Force for Labour Clauses 1-3, 11/22). During both 2021 and 2022, the control unit had a specific focus on cleaning and security services in their inspections due to these industries were identified as sectors with high-risk of compliance problem (Danish National Task Force for Labour Clauses, n.d-b, 2023).

### **Obstacles, constraints, conflicts and learning processes:**

Overall, it is a difficult task to inspect working conditions and hence labour clauses, and typically the collective agreements are rather complex, and most labour clauses in public contracts do not as such specify which terms the contracting company is to follow (although they could, see discussion of representativeness elsewhere and

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<sup>8</sup> <https://www.ft.dk/samling/20191/almdel/beu/spm/207/svar/1648374/2173443/index.htm>

CASE STUDY DK-2). Moreover, when, for instance, the suppliers are hiring migrant workers (which is often the case for part of the workforce in cleaning and construction projects), it can be difficult for the inspectors to have an open, trustful dialogue with these workers, which in practice makes it very difficult to uncover labour-related problems in the inspections. Gaining the trust of migrant workers are typically a very long, and time-consuming task, in particular with migrant workers in precarious working conditions, and while this is also challenging for the unions, they are at least in better position due to regular presence and having organisers speaking the native language of the workers (Refslund, 2021). As one interviewee from the control unit stated; *“we are not the union movement, and we are not supposed to be either.”* (Interview Danish National Task Force for Labour Clauses 2, 11/22). Nevertheless, this may cause problems in terms of addressing issues in the ‘grey-zone’ between contractual issues and collective bargaining/union issues. An example given by an interviewee from the control unit is that some security workers told the control unit inspector during an inspection that they were automatically enrolled in the yellow union (DFH) or told to do so if they wanted to keep their employment. Another example concerned some migrant construction workers, who signed the time sheets *before* the hours were filled in, which is fraudulent. Both examples would obviously be something the unions would react to, but these are not issues for the control unit as such, as this is not part of the labour clause. Instead, it was mentioned in the control unit’s report, which is then left to the public procurement managers to address. While the interviewee from the control unit did not know how the procurement manager in charge handled this, it seems quite safe to assume that hardly anything was done about it, as it is not considered a breach of the labour clause. Therefore, it is even more troublesome for the procuring unit to address.

Moreover, there is an obvious schism between the collective agreement system, which is based on voluntary agreements between employers and unions and the work of the control unit, which is based in the contractual relation between a supplying company and the public procurer. This may cause regulatory, judicial and practical problems, as discussed above. A concrete example is penance: if a company violates both the collective agreement *and* the labour clause – these breaches often occur in tandem – they could get punished twice. First, in the Labour Court system for violating the collective agreement, where the union would receive the penance, as they are the owners of the collective agreement that is violated. The union normally distributes the penance among the workers, *who are members of the union* and keep the rest. Second, the infringing company would receive a penance for breaching the contract with the public procurer – here specifically the labour clause. Thus, the company would be punished twice. This could – at least theoretically – diminish the support for the Danish industrial relations model, by reducing the companies’ incentive to join the employer’s association (and hence automatically become signatories to the collective agreement) as they risk getting punished twice. The control and sanctioning of labour clause also amount to potential alterations in the Danish industrial relations, which is perceived as problematic by some actors also interviewed unionist how have an ambiguous approach to the external control (Interview The security worker’s union (VSL), 1/22; information from union representatives in stakeholder-meeting). In the industrial relations model, it has been a strong pivotal point that it is up to the unions and employer’s associations/companies to negotiate the wages and terms in the collective agreement, and then it is up to the union to control if the collective agreement is complied with. Now the Danish National Task Force for Labour Clauses has a complementary role in this inspecting the collective agreements (or terms equalling this). For the sceptical union as well as employers’ association representatives this is a reduction in the autonomy of the industrial relations actors, which may in turn be a sliding slope for the voluntary model towards a more state-centred model.

This system also implies that public procurement manager is to interpret the collective agreements – which can be problematic – as one union interviewee stated, *“It is our collective agreement and we are of course interested*

*in ensuring that it enforced*”, but at the same time they can be very tricky to figure out (Interview The security worker’s union (VSL), 10/22). As described above the reports of the control unit typically end up on the desk of the public procurement manager, potentially a contract manager, who are responsible for handling all aspects of the contractual relation including quality, costs and time. This means that the labour clause is not necessarily a high priority, and since it is complex, it can by some public procurement managers be seen as a burden, which they find difficult to handle as they do not have the necessary tools and qualifications to make the decision. This was, for instance, pointed out by a union interviewee in another research project we did, on a large public construction site, where the problems with wages and working conditions (and hence the labour clause) were seen as a drag on the overall project deadline by site management.

Finally, the Danish state purchases for roughly 42 billion DKK. per year (around €5.6 billion) (Rigsrevisionen og Statsrevisorerne, 2020:1), so ten employees in the Control Unit can obviously only control a minor share of all these purchases and contracts. This is obviously a limitation and an increased budget with more employees would mean the Control Unit could cover more contracts to inspect the labour clauses.

## **Outcomes and expected impact on work**

The control unit has now been operative since 1<sup>st</sup> of October 2020, and the inspectors are still developing the procedures and inspection routines as well as their cooperation with the procuring units, so it remains a bit early to evaluate the work (but an internal evaluation report is under preparation). It is also difficult to evaluate the effect directly on decent work as the evidence would be (at least partly) counterfactual reasoning, for instance, on a potential preventive effect. Nonetheless, the control unit does fulfil the first objective, namely that the State authorities are living up to the obligation in the legislation of controlling their own labour clause<sup>9</sup>. Additionally, the interviewees expressed that they recognise a preventive effect of the control unit’s work, which also is in line with the experiences of other similar control units, for instance, in Copenhagen municipality (Jaehrling et al., 2018); see also CASE STUDY DK-3 and DK-4 below). Moreover, the inspections have uncovered various violations and problems. The control unit finds problems in around 70 % of the inspections (in 2022, this was 78 %, Danish National Task Force for Labour Clauses, 2023). In 2021, they inspected 88 worksites and in 2022 46 worksites (Danish National Task Force for Labour Clauses, n.d-b, 2023). The breaches mainly relate to payment, pension and working time (Danish National Task Force for Labour Clauses, n.d-b). As the inspection are risk-based it does not suggest that there are problems in 70% of all public contracts. On the other hand, is it naïve to believe that the control unit expose all wage and working conditions problems within public procured work, and in particular the more hidden and complex forms of evasion of the terms set in the labour clauses. The social dumping debate in Denmark (which sort of lays at the root of the labour clause discussion) very much relate to migrant work, and this is a substantial challenge to overcome, in particular as migrant workers are less prone to give full information about their labour market problems especially with ‘outsiders’, which the inspectors from the control unit would be to them. While the control unit’s work is definitely a step in the right direction in regard to reduce labour market vulnerability and poor wages it will not solve the problem. However, there is no easy fix for solving these challenges, and it will require on-going adjustments and developments in the Danish industrial relations system to mitigate these challenges.

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<sup>9</sup> The State Auditors have expressed the same position in a recent assessment of development since their 2020 report on the control and sanction of labour clauses in state authorities: <https://rigsrevisionen.dk/revisionsager-arkiv/2020/jun/beretning-om-statens-brug-af-og-kontrol-med-arbejdsklausuler#heading6>

Overall, the Control Unit is contributing to the professionalisation of the emerging field of controlling and securing the application and enforcement of labour clauses in public procurement, and hence contributing to securing decent work by reducing the protective gaps for workers performing public procured work (migrant as well as resident workers). Moreover, the unit contributes to an emerging professionalisation among the public procurers to integrate the labour clauses better in the pre-tender period and engaging in dialogue with potential bidders over the issues in the labour clauses, for instance specifying the collective agreement to adhere to and discuss in detail what elements to implement (Interview Agency for Public Finance and Management, 10/22). This experience can be utilised for other procuring units as well as inspecting units. At the time of writing the further funding for the control unit beyond 2023 is not in place, but there are among the interviewees a clear expectation, which we also share, that the period and financing as a minimum will be prolonged.

## Lessons

The aim of the control unit is clearly to contribute to decent work in public procured work and combat social dumping. This was, for instance, clearly communicated in the press communication on the launch of the control unit. Here the current Minister of Employment Peter Hummelgaard stated: *“This government will not tolerate social dumping. Therefore, we are now targeting those companies that, through underpayment and poor working conditions, try to cheat their way into conducting tasks for the state.”*<sup>10</sup> It seems very evident that if labour clauses are to contribute substantially to decent work in public procured work, they must be enforced, which means in practice that the labour clauses are controlled, and violations are sanctioned. The main effect of the inspections and sanctions is according to all interviewees in this research project the preventive effect, yet deterrence cannot fully eliminate problems (as for most other public policy and regulatory areas). Labour clauses and a strong inspection regime of these is, hence, not a panacea for securing decent work in public supply chains. The control regime and the real, substantive risk of high-quality inspections can be assumed to reduce the severity, scope and scale of work-related problems in public procured work. Yet, it must be seen in relation to the other dimensions of regulation, which in Denmark is still based on the voluntary regulation by the social partners and in particular the trade unions. Moreover, as Danish state authorities purchase for roughly 42 billion DKK per year (around €5.6 billion euro) (Rigsrevisionen og Statsrevisorerne, 2020:1), and the control unit has a budget of 5 million DKK this obviously renders the possibilities for reaching all companies and all workers under the public contracts highly unrealistic. Therefore, this inspection system can only be seen as complementing the traditional industrial relations system, where the task of securing decent work is mainly left with the trade unions in the voluntaristic model (with some exceptions like OHS which is inspected by state authorities (The Danish Work Environment Authority).

The work of the control unit does, however, occupy a new and intermediate position in the regulation of wages and working conditions on the Danish labour market. This uneven position is somewhat challenging for the industrial relations regulation as it alters the relation between social partners, in particular the unions, and state authorities, as well as the roles of the different actors, and it may result in governance problems. Problems which need to be sorted out. Although we argue above that the current role of the control unit is complementary it may be a long-term question if this is (first) part of a substitution instead – if your wage and working conditions are enforced by a public agency no matter your union affiliation (or lack thereof) why would you join the union? Implicit the unions’ positive stance towards the inspections and the control unit indicates that they have a hard time fulfilling this task, which traditionally was the sole responsibility of the unions, in certain areas.

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<sup>10</sup> <https://www.trm.dk/nyheder/2020/ny-kontrolenhed-skal-bekaempe-social-dumping/>

In sum, the control unit is not solving all the potential issues, but it is a step towards a more coherent and not least professional approach to the application and enforcement of labour clauses in public procured work. This, hence, moves the potential ‘paper tigers’ towards more real-life tigers, however it is not quite there yet. The process of controlling and sanctioning the labour clauses also contributes to the professionalisation of the field of public procurement, for instance, in the pre-tender period and in producing better and clearer contracts as well as labour clauses. For the latter, this includes, for instance, specifying in the labour clauses what the suppliers must adhere to, the penalties, time limits for answering etc. (Interview Danish National Task Force for Labour Clauses 4, 12/22), which in turn makes it easier for the inspections to control, but also provides clarity for the suppliers, so they know exactly what is expected from them.

## Resources and references

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- Danish National Task Force for Labour Clauses (2023) Årsrapport 2022. Status for 2022 for Statens Kontrolenhed for Arbejdsklausuler. København: Transportministeriet.

**List of interviews**

Date (MM/YY)	Organisation
11/22	<b>Danish National Task Force for Labour Clauses 1</b> , Chief operating officer
11/22	<b>Danish National Task Force for Labour Clauses 2</b> , CSR consultant, inspector, conducting inspections
11/22	<b>Danish National Task Force for Labour Clauses 3</b> , CSR consultant, inspector, conducting inspections
12/22	<b>Ministry of Employment</b> , Head of section, involving in legislation on labour clauses and other industrial relations issues
12/22	<b>Danish National Task Force for Labour Clauses 4</b> , CSR consultant, inspector, conducting inspections
12/22	<b>Danish Trade Union Confederation (FH)</b> Lawyer, working on public procurement and related issues
10/22	<b>Agency for Public Finance and Management - Ministry of Finance</b> , Governmental Supply, policy and Contract Controlling of Legal Services, Chief Consultant

## ***CASE STUDY DK-2: The appendix 1A-I in the labour clauses in security services***

### **Objective**

Appendix 1A-I in the State’s contract with suppliers in security services specifies the terms of wages and working conditions that the supplying companies must follow when working under the labour clauses. The 17-point list, which must be met by the supplier, includes specifications on working hours and planning of working hours, terms for terminating the worker’s contract, breaks, sick leave, holidays and holiday payment and other issues that can be seen as less important than the key issues of wages and other payment like pensions and other payments. The terms in the appendix are taken from the conditions in the most representative collective agreement in the industry (the collective agreement between Confederation of Danish Industry (DI) and VSL Vagt-og sikkerhedsfunktionærernes landsforening – the guard and security workers union). This accordingly rules out that companies that follow terms in a lower-paying, cross-sectorial and much less representative collective agreement can be compliant with the labour clause. This closes the potential for paying a lower wage, and hence in practice increases the wage for the security workers providing services for the public buyers. It also removes some of the legal and contractually uncertainty associated with many labour clauses as they only specify that the supplier is obliged to provide wages and working conditions ‘*not less favourable*’ than those in the most representative, national collective agreements within the specific sector under scrutiny.

### **Situation before the experimentation**

As described in this report, the application of labour clauses has become an integrated part of Danish public authorities’ procurement practices since the 2014 update in the legislation. Especially as it is mandatory for the State-level authorities. So, the discussion now concentrates more about the enforcement and application of the labour clauses in daily practices.

There were uncertainties (as in many other labour clause) on what collective agreement, the ‘not less favourable terms’ referred to in the labour clause used in security service procurement within the State (through the state authority Moderniseringsstyrelsen). In particular since a security service company providing services at among others the Danish Parliament followed another collective agreement with a yellow or ideological alternative union (DFH, det faglige hus). This collective agreement has very limited range in comparison with the most representative agreement in the industry between DI and VSL. The alternative collective agreement was paying at lower levels, in particular in terms of overtime regulation, pay under sick leave, but also the hourly payment and included local wage negotiation (which the VSL-agreement does not, as this often result in concession bargaining in a sector without strong local representation (the traditional mindstelønsområde in Danish, which also includes cleaning and transport workers). However, it is a bit difficult to establish the exact difference between the two agreements, as this depends on whether the worker has a fulltime or part-time contract, and how much overtime the worker has. Finally, the alternative (DFH/KA) collective agreement is a cross-sector agreement covering various industries and trades, where the wording in the labour clause regulation specifies that the most representative must be within the same “*type of work*” and “*...within the relevant professional area*” (Circular on labour clauses 2014, §3). Hence, the security workers working for a specific company (then

known as ASS) were paid below the industry average, which caused both media attention<sup>11</sup> as well as discussion in the Danish Parliament<sup>12</sup>, where the Minister of Employment had to answer to several critical questions, in particular from the left-wing parties. The situation with lower payment caused extra attentions since it took place at the national administrative centre Slotsholmen, a small island in the middle of Copenhagen, which besides the Danish Parliament (Folketinget) also houses several ministries and the Supreme Court. Moreover, the security work at the Labour court was also done by this company with a yellow collective agreement, which was seen as provocative by many in the union movement<sup>13</sup>.

## Origins of the experimentation

Following the above-mentioned problems of below-industry level wages, the public procurer investigated the underpayment issues, and following this a legal out-of-court settlement was reached between the company Alliance Security Services (nowadays VSD) and the Agency for Public Finance and Management under the Ministry of Finance (ØS). The compromise stipulated that the company had to pay a financial penance to the ministry (100.000 euro according to press coverage<sup>14</sup>) as well as penance to some workers for underpayment (roughly 50.000 euro in total, also according to press coverage). In the settlement, additionally the 17 specific points – taken from the VSL collective agreement – were to be met in future work for the public by the company. This was to secure that the labour clauses were enforced, since the ministry did not find that the KA/VSD collective agreement was in compliance with the labour clause.

The same 17 measures were then also specified in the appendix (1A-I) to the labour clause for security services in state public procurement. The appendix deals with wages, working conditions, working hours, overtime payment, holiday payment, sick leave, terms for terminating the work contract, and other minor issues. All the points were taken directly from the VSL collective agreement, and each point of the 17 points in the appendix refers directly to the specific paragraphs in the VSL collective agreement. This clarified that the VSL-agreement is the most representative agreement in the industry, and that suppliers must therefore adhere to terms in this agreement to comply with the labour clauses. At the same time, it clarifies that the terms in the much smaller, cross-sectional collective agreement (to our knowledge only covering this one company VSD/ASS) does not fulfil the labour clause. The appendix, hence, establishes that the VSL is the only collective agreement suppliers in security services can follow to be complying with the labour clause. This in practice rule out the lower payment associated with the DFH/KA collective agreement.

The problem with lower payment for the ASS/VSD workers did also in the first place come about because the public procurer probably chose the lowest bid, pointing to enduring challenge of balancing social demand/BDW with cost efficiency.

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<sup>11</sup> For instance: <https://www.altinget.dk/arbejdsmarked/artikel/statsorganiseret-loendumping-stoettepartier-vil-smide-omstridt-vagtselskab-paa-porten>

<sup>12</sup> <https://www.ft.dk/udvalg/udvalgene/BEU/kalender/32098/samraad.htm>

<sup>13</sup> <https://politiken.dk/indland/art7677761/Vagter-p%C3%A5-gul-overenskomst-skal-visitere-r%C3%B8de-fagspidser>

<sup>14</sup> <https://www.altinget.dk/arbejdsmarked/artikel/statsorganiseret-loendumping-stoettepartier-vil-smide-omstridt-vagtselskab-paa-porten>.



## Actors involved

The Agency for Public Finance and Management under the Ministry of Finance (ØS, back then Moderniseringsstyrelsen) took the initiative for both the legal settlement and the appendix, nevertheless this came after the critical media coverage, critique from the security worker's union (VSL) and political pressure to find a solution. Nevertheless, the agency made the final decision. The union (VSL) play a lesser role at least formally, although it is their collective agreement that is being refer to, they have no formal impact. However, the union actively and quite successfully sought to put pressure on the relevant actors to address the lower payment in the KA/DFH agreement. Moreover, the legislation on labour clauses specifies that the public authorities can seek assistance on, for instance, payment issues in the labour clauses from relevant actors, including the unions. Therefore, the union has since then been consulted on for instance wage calculations and other issues of interpretation of the collective agreements by some state authorities (but not all) and the union officials make themselves available for explaining the collective agreement and assessing for instance specific calculations on hours and wages (Interview The security worker's union (VSL), 10/22). As the interviewed union official from VSL states "*It is our collective agreement and we are of course interested in ensuring that it is enforced*" (Interview The security worker's union (VSL), 10/22). However, the lack of dialogue with some public authorities causes frustration in the union, since the security service collective agreement is quite complex, and they are not pleased about the situation, where others have to interpret it. In particular, if the collective agreement is to be interpreted by administrative staff and public procurement managers without the necessary time and knowledge, who moreover have a less keen interest in ensuring the correct enforcement, as their main concern is the general operations, price and quality. This illustrates quite well the problems with labour clauses being situated in a grey-zone area between contractual law, voluntary labour market regulation (the traditional Danish industrial relations model) and labour law (with much of it being anchored in and around the voluntary industrial relations model).

## Obstacles, constraints, conflicts and learning processes:

The standard labour clauses used by Danish public authorities (which is suggested in the instruction for the legislation) specify that the conditions in *the most representative collective agreements which is covering the whole country* are to be followed. This phrase of *the most representative* is also included in the actual legislation on labour clauses (CIR1H nr 9471 af 30/06/2014 §3). However, in certain industries it may be less clear, what the most representative collective agreement precisely refers to. This is important in this case, since the appendix to the labour clause very clearly manifests that it is only the VSL collective agreement, which is representative. As stated elsewhere the question of how the representativeness is assessed is an (somewhat) open (legal) question, but in this case, there is less (if any) doubt. The coverage of the VSL agreement is very high (80-85 % of the industry), the coverage is clearly national, and there are significant differences in the actual content of the two agreements. Moreover, VSL organises a 'substantial proportion' of the workers in the industry. Nevertheless, the Agency for Public Finance and Management - Ministry of Finance (back then Moderniseringsstyrelsen) did also take the initiative (after some pressure) and showed some vigour by declaring the VSL collective agreement as representative for the industry, setting any doubts aside. However, it is not always as straight forward to decide what collective agreement and, hence, also organisations that are the most representative in a certain industry. The 'representativeness' issue is somewhat ambiguous from a legal perspective, and there is no clear judicial precedence at the European or international level (Nielsen, 2022: 245-255). Hence, it is left to the actors to judge the issue of representatives, yet it in many sectors the question is not so complex from an industrial relations

perspective, like for instance in the security service, where it is clear enough (on the issue of representativeness see also page 15-17 above).

### **Outcomes + (expected) impact on work**

The appendix has clarified which wages and working conditions the specific supplier (in this case VSD, but potentially also other suppliers how do not follow the VSL collective agreement) must follow, which has forced VSD to change their practices, from what before were seen as lower payment (in comparison with the VSL-agreement), hence improving the working conditions for a group of workers performing public procured security work. In that sense, the appendix has fulfilled its purpose. Hence, the specification of what “not less favourable” mean in practices is a clear improvement in relation to the application of labour clauses in Danish public procurement within security services. Despite an overall positive outcome, it remains uncertain (at the time of writing) whether the appendix will be part of the next round of public procurement, since security services will be part of a larger facility management tender in the state public procurement.

Additionally, while the appendix very precisely states 17 points from the VSL collective agreement, there are still a few uncertainties about part-time and full-time work and overtime payment. This is for instance the case, if a worker has working hours both in public procured and in private sector employment (on the DFH/KA collective agreement), when does the overtime payment start and what collective agreement is to be followed? Moreover, it is deemed as a complex task for the state authority (ØS) to assess, whether the regulation specified in the labour clause and the appendix is met or not (Interview Agency for Public Finance and Management, 10/22).

### **Lessons**

In sum, it can be concluded that public procurers can specify a certain collective agreement as the ‘most representative’, if it is assessed as such, and make elements from the collective agreement a formal part of the labour clause, and hence legally binding. This can help clarify the demands of the public buyer and provide some contractual clarity for the supplier, as it can be challenging for supplying companies to sort this out. In many instances, it is not clear to the public buyer either, they just put the standard labour clause in, as they are not experts on collective agreements and labour market regulation. The standard formulation only specifies conditions that are ‘not less favourable’ than those in the most representative, national collective agreements within the specific sector under scrutiny. The clarification in the appendix moreover reduces the risks of a supplier utilising the uncertainty about what collective agreement to refer to for paying lower wages or have less favourable working conditions. Again, having in mind that the public procurers cannot demand that the contractors sign a collective agreement, only that they adhere to certain elements in particular wages and working conditions. However, this requires that the representativeness (most representative, national sectorial collective agreement) is clearly stated, accordingly it may be more challenging in other industries with more than one collective agreement that (at least potentially - since this is still depends on a specific assessment) fulfil the representative demands (like in cleaning). It could be tested in a legal case whether the representativeness claim holds, and the Danish Labour Court has previously been occupied with issues of representativeness. Nevertheless, as argued by Nielsen (2022) the term representativeness remains ambiguous in Danish public procurement law (and in the wider Danish judicial perspective).

Specifying the conditions in the call for tenders (pre-decision) and in the contract can also facilitate a dialog between the supplier (both potential and the actual winner of the bid) and the procuring public unit. This was something wished for by a public procurer interviewed for this project, since a better dialogue about the

conditions, like wages, working hours and scheduling would make the cooperation with suppliers smoother, rather than the dialogue only starting when problems are encountered (Interview Agency for Public Finance and Management, 10/22).

## Resources and references

Nielsen KH (2022) Arbejdsklausuler i offentlige kontrakter – Kohærens mellem indkøb og arbejdsmarked. Ph.d.-afhandling juridisk Aarhus Universitet.

### List of interviews

Date (MM/YY)	Organisation
10/22	<b>The security worker's union (VSL)</b> , senior consultant, responsible for the union's work with labour clauses
12/22	<b>Danish National Task Force for Labour Clauses 4</b> , CSR consultant, inspector, conducting inspections
12/22	<b>Danish Trade Union Confederation (FH)</b> Lawyer, working on public procurement and related issues
10/22	<b>Agency for Public Finance and Management - Ministry of Finance</b> , Governmental Supply, policy and Contract Controlling of Legal Services, Chief Consultant

## ***CASE STUDY DK-3: Cross-Municipal inspection unit in the greater Copenhagen area***

### **Objectives**

The Capital of Denmark – Copenhagen municipality– introduced labour clauses in public procurement contracts in 2011. Since then, the municipality has not only expanded the scope and depth of their labour clauses to new policy areas, covering for example social clauses, usage of ID-cards, a presumption rule (i.e. all subcontracted workers, including solo-self-employed, are presumed employees), climate targets, and corporate social responsibility more broadly, but also invested substantial resources to secure their enforcement (Copenhagen municipality, 2022). One of the most recent initiatives is the new cross-municipal inspectorate from 2021, involving a collaboration between the Municipality of Copenhagen and initially four smaller municipalities (Albertslund, Hvidovre, Rødovre, Glostrup) within the greater Copenhagen area to secure supplying companies and their potential subcontractors’ compliance with labour clauses in public procurement contracts. Initially, only four of the initial five municipalities decided to proceed with the joint inspectorate, but since then more municipalities from the Greater Copenhagen area have expressed interest in joining the cross-municipal collaboration, including the municipality (Glostrup) that initially opted out.

The cross-municipal inspectorate was officially set up in late 2021, but before then there had been a series of initial meetings between the involved parties on how to proceed, including streamlining expectations, discussing the set-up for the joint control-unit and signing joint collaboration agreements (Copenhagen Municipality et al., 2022a). The cross-municipal inspectorate is located at the premises of the already well-established control unit of Copenhagen municipality. It is in principle an independent unit with its own staff (1- full-time employee) and funding, but the cross-municipal inspectorate forms de facto part of the control unit of Copenhagen municipality, which employs a team of 8-9 full-time employees. There is already a close collaboration between the two units, and the idea is that once it is full up and running the two units are to be considered as a joint cross-municipal inspectorate for the greater Copenhagen area. This is among others illustrated by their joint logo, staff coordinating joint inspections, sharing resources, expertise, good practices, coordinating inspections etc. The cross-municipal inspectorate applies similar inspection practices as the Copenhagen control unit but applies different labour clauses depending on the municipality under consideration.

The intended objectives of developing the cross-municipal inspectorate differed across the involved municipalities. The smaller municipalities’ motives to join forces were partly financial, partly to optimize and strengthen their enforcement efforts through the set-up of a cross-municipal inspectorate and thus gain economies of scale both financially and administratively. There was also a strong interest among the participating municipalities to secure the necessary know-how, specialist knowledge and professionalism, which can be difficult to achieve when as a smaller Danish municipality with budget cuts, sparse resources and having to prioritise enforcement of labour clauses vis a vis other welfare and public services. The enforcement of labour clauses typically requires substantial resources beyond the capacities of many smaller municipalities, where public procurement is often of a comparatively lower volume than the larger Danish municipalities and notably the enforcement of labour clauses is typically not considered a main welfare area by most Danish municipalities. The Copenhagen municipality is renowned for investing substantial resources to ensure enforcement of their labour clauses in public procured work and decided to join the cross-municipal collaboration to share their specialized enforcement practices and exchange experiences to develop a joint front towards combatting social

dumping (Copenhagen Municipality, 2021). Another key concern raised in the interviews was also that by engaging in the collaboration, Copenhagen municipality would be able to secure a level playing field for public procurement, where Copenhagen municipality and other municipalities enforcing labour clauses would continue to appear attractive for potential suppliers vis a vis municipalities without such enforcement practices.

Both the smaller and larger municipalities as well as suppliers and affected workers stand to benefit from the joint cross-municipal inspectorate, as the overall aims are to secure fair competition, along with wage and working conditions that equal statutory and collective agreed labour standards in public procured work. Thereby, the initiative seeks to address not only wage dumping, but also social dumping and violations of collective agreed labour standards more broadly. As a first initial step, the involved municipalities agreed to focus on construction, leaving inspections of other public procured services such as cleaning and security to the individual municipalities, but with the intention to expand the scope of their joint enforcement efforts to all forms of public procured work once the initiative was up and running. In the meanwhile, the participating municipalities are able purchase additional enforcement services and inspections from the control unit of the Copenhagen municipality within other areas of public procured work. The reason for this enforcement model was that only some of the involved municipalities had the political mandate to broaden the scope of the new cross-municipal inspectorate to all forms of public procured work. The lack of a political mandate was also the main reason why one of the initial five municipalities were unable to take part. However, after the local elections in November 2021, this municipality gained the political mandate and is now, like several other municipalities from the greater Copenhagen area, interested in joining the cross-municipal collaboration.

### **Situation before the experimentation**

The five municipalities that initially expressed interest in developing a joint cross-municipal inspectorate and subsequently took part in the first series of dialogue meetings already used labour clauses in public procurement contracts, but had invested few resources to ensure their implementation and enforcement, except for Copenhagen municipality. Prior to the joint collaboration, all five participating municipalities based their labour clauses on the ILO-94 convention and they requested that supplying companies offer wage and working conditions equalling at least the minimum labour standards outlined in the most representative collective agreement within the relevant sectors. Their pre-existing labour clauses also included chain liability and requested suppliers to provide a list of their potential subcontractors. Possibilities for inspections and economic sanctions in case of non-compliance also formed part of all the five municipalities' labour clauses (Copenhagen Municipality, 2021f; 2021; Hvidovre 2023; Rødovre, 2017; Albertslund, 2003; Glostrup, 2021).

However, there are also important variations across the five municipalities as to the content of their pre-existing labour clauses. The labour clause used by Copenhagen municipality appears to be the most comprehensive and includes elements that are only to some degree, if at all, addressed in the other municipalities' pre-existing labour clauses (Copenhagen Municipality, 2023a; 2021; Hvidovre 2023; Rødovre, 2001; Albertslund, 2003; Glostrup, 2021). For example, the labour clause by Copenhagen and Hvidovre municipality applies to all forms of public procured work, while this is not the case for the municipalities of Rødovre, Albertslund and Glostrup, where the usage of labour clauses is limited to public procured work within construction. In addition, it is only Copenhagen municipality that explicitly requests that the supplying companies provide accident insurance schemes for all their workers. Their labour clause also includes a presumption rule, stipulating that if the employment status of subcontracted workers is unclear such workers are de facto to be considered employees, not self-employed, whereby the labour clause and subsequently wage and working conditions in the most representative collective agreement within the particular sector also apply to solo-self-employed (Copenhagen Municipality, 2023a:

2021). In addition, only some of the other municipalities made requests like Copenhagen municipality that suppliers use ID-cards (Hvidovre) and inform all their own workers and potentially subcontracted workers about their wages, working time and provide them with an employment contract (Hvidovre & Glostrup). The various deadlines for documentation and assessments as well as the potential size of economic sanctions also differ across the individual municipalities' labour clauses (Copenhagen Municipality, 2023a; 2021; Hvidovre 2023; Rødovre, 2001; Albertslund, 2003; Glostrup, 2021). Moreover, and unlike the other four municipalities, Rødovre municipality had included explicit references to specific sector agreements within their pre-existing labour clause, but this clause has since then removed as it was considered unlawful following legal advice according to the interviewees.

Besides the variations across the five municipalities in terms of content of their labour clause, their enforcement efforts and allocated resources also differ. For example, Glostrup municipality had no pre-tradition of conducting and allocating resources to inspections to secure compliance with their labour clause, but the local council agreed to a specific annual budget to carry out inspections in 2021. Likewise, the municipality of Albertslund had also no specific budget nor systematic enforcement procedures in place prior to joining the cross-municipal inspectorate, but unlike Glostrup municipality, they had conducted sporadic inspections, if suspecting potential violations of their labour clause according to the interviewees. Hvidovre and Rødovre municipalities have, similar to Copenhagen municipality, opted for a different enforcement solution. In the cases of Hvidovre and Rødovre, they have historically had a specific annual budget allocated for securing compliance of their labour clauses and have relied on external control units such as private accountant companies to carry out the inspections of their private providers. These inspections have led to a few cases of non-compliance typically concerning minor issues such as miscalculated pension contributions. The enforcement efforts by Copenhagen municipality come across more comprehensive compared to the other municipalities. Like some of the other municipalities, Copenhagen municipality initially outsourced their inspections to a private company. However, after an external evaluation and criticism of the used enforcement practices by the private inspectorate, the municipality decided to insource the inspections (Baadsgaard and Jørgensen, 2018). In 2018, they subsequently set up their own in-house enforcement team comprised of 8-9 full-time staff with an annual budget of 4 million DKK to cover its running costs (Copenhagen Municipality, 2021b). The in-house inspectorate has carried out around 600 risk-based inspections per year since 2018. The risk-based inspections entail that the enforcement team only carry out inspections within what is considered so-called high-risk areas of potential violations based on a set of criteria, not least to optimize and target their resources, but also not to trouble suppliers who comply with the labour clauses. The inspections by the in-house inspectorate comprise four types of control, covering screening visits at the site of the suppliers, document control, training controls and on-site inspection visits (Copenhagen Municipality, 2022). In 2021, the enforcement team of Copenhagen municipality identified violations in 63 per cent of the total of 614 cases. Most violations were found within transport (99%) followed by industrial cleaning (61%) and construction (44%), while least violations were seen within security (14%) (Copenhagen Municipality, 2020a; 2021b; 2019a; 2018a). However, there has been a higher share of non-compliance cases within industrial cleaning in the past, notably in 2020 during the Corona pandemic (96 per cent of the cases in 2020; 59 per cent in 2019; 92% in 2018). The violations typically concern wage dumping of varying degrees and this also applies to cases within industrial cleaning and security cases (Copenhagen Municipality, 2022a; 2021a; 2020a).

While the enforcement model adopted by Copenhagen Municipality comes across as comprehensive and has served as inspiration for many other Danish municipalities, the same cannot be said for the other four municipalities. Their less developed enforcement efforts, along with increased political pressure to prevent social dumping and ensure suppliers' compliance with their various labour clauses, pushed the enforcement issue up

on the political agenda. It was especially various media stories about wage and working conditions below the collective agreed standards among food delivery workers working for the private contractor [nemlig.com/interware](https://nemlig.com/interware) that deliver groceries to various municipal institutions that sparked the debate. This subsequently led the participating municipalities, notably Glostrup, Albertslund, Hvidovre and Rødovre to reconsider their enforcement efforts and join forces to experiment with novel ways to strengthen the enforcement mechanisms in the form of a cross-municipal inspectorate according to the interviewees.

## Origins of the experimentation

The initial idea to set up a cross-municipal inspectorate started with Hvidovre municipality approaching the other four municipalities (Rødovre, Albertslund, Glostrup and Copenhagen) to discuss various ways to strengthen their enforcement efforts back in early 2020 (Copenhagen Municipality, 2021a; Interview: Hvidovre Municipality, 02/2023). According to the interviewees, various enforcement models were discussed both internally and between the participating municipalities. There was reportedly a common understanding between the participating municipalities that rather than outsourcing the enforcement to a private inspectorate, the aim was to develop in-house enforcement solutions that would pool and optimize the scarce enforcement resources by the individual municipalities (Interviews: Hvidovre Municipality, 02/2023; Glostrup Municipality, 02/2023; Albertslund Municipality, 02/2023; Rødovre Municipality, 01/2023, Copenhagen Municipality, 02/2023). This was the beginning of a series of meeting and consultations between the participating municipalities. They subsequently decided that rather than re-inventing the wheel, they would pursue the idea of developing a cross-municipality inspectorate based on the main principles of the used model of the well-established control unit of Copenhagen municipality, where the other municipalities would be able to tap into and draw on the experiences, know-how and enforcement practices by Copenhagen municipality.

The discussions about developing a cross-municipal inspectorate initially involved all five participating municipalities. However, one of the municipalities (Glostrup) were unable to secure the political mandate by their local council to continue their involvement, while in the four other municipalities there was broad political support across political parties to proceed with the initiative according to the interviewees. This subsequently led to the four of the five municipalities to sign various collaboration agreements outlining the overall framework and main features of the cross-municipal inspectorate (Copenhagen municipality et al. 2022d; 2021g). The cross-municipal inspectorate differs slightly from the enforcement model adopted by the Municipality of Odense and their collaborating municipalities (see also case 4; table 1). Firstly, the cross-municipal inspectorate covering the greater Copenhagen area apply similar principles for inspections along the lines of the Copenhagen control unit, but different labour clauses apply depending on the individual municipalities, where variations exist as to their content and economic sanctions. Secondly and unlike the Odense case, the cross-municipal inspectorate is co-financed by the participating municipalities and located at the premises of the well-established Copenhagen control unit and is an integrated part of this unit, where there is close collaboration between the staff and the cross-municipal inspectorate taps into the experiences and specialized knowledge of the Copenhagen control unit. The enforcement team comprises of 8-9 full-time employees of the pre-existing Copenhagen control unit and 1 full-time employee financed by the participating municipalities with the intention to increase this number of staff over time (table 1)

**Table 1: The key features of the cross-municipal inspectorate**

<p><i>Set-up:</i></p> <ul style="list-style-type: none"> <li>• Joint inspections, but different labour clauses</li> <li>• Initial focus on construction, but with the aim to broader to all forms of public procured work</li> <li>• Possibility for collaborating municipalities to buy additional inspection services</li> <li>• Cross-municipal inspectorate located at the premises of the well-established Copenhagen control unit</li> </ul>
<p><i>Enforcement team:</i></p> <ul style="list-style-type: none"> <li>• 8-9 full-time employees from the original Copenhagen enforcement unit</li> <li>• 1 full-time employee financed by participating municipalities, employed by Hvidovre municipality, but outsourced to Copenhagen municipality</li> <li>• Team of two conduct inspections – all inspectors conduct both field work and office work i.e. follow the individual cases from start to completion</li> <li>• Contact person in each of the individual municipalities</li> </ul>
<p><i>Funding:</i></p> <p>Co-financed by the participating municipalities</p>
<p>Inspections follow the main principle for the well-established Copenhagen control unit:</p> <ul style="list-style-type: none"> <li>• Risk based inspections</li> <li>• Screening visits,</li> <li>• Document control</li> <li>• Hotline</li> <li>• Dialogue based approach to address violations of labour clauses, terminating public tender contract is last resort</li> <li>• Economic sanctions: differ in size</li> </ul>
<p><i>Division of work tasks:</i></p> <ul style="list-style-type: none"> <li>• <i>Enforcement team:</i> carries out inspections, deliver status report to the individual municipalities</li> <li>• <i>Regulatory/legal responsibility</i> lies with the individual municipalities i.e. municipalities decide if they want to proceed with litigations, they also provide list of subcontractors.</li> </ul>
<p><i>Aim:</i></p> <ul style="list-style-type: none"> <li>• Prevent social dumping &amp; secure wage and working conditions according to collective agreed labour standards</li> <li>• Create level playing field and fair competition</li> </ul>

## Actors, strategies and resources involved

The development of the cross-municipal inspectorate was initiated and led by the participating municipalities. where both the local mayors and representatives from the individual municipalities’ public procurement offices and local councils have been involved. The local councils’ involvement has primarily been to provide the political mandate for the individual municipalities to continue the joint collaboration around the set-up of the cross-municipal inspectorate as well as the decision to secure a local budget to finance the initiative. In this context, it is important to highlight that there has been a sort of political momentum across the participating municipalities to strengthen the enforcement mechanisms to prevent or limit social dumping, typically fuelled by various social



media stories about poor wage and working conditions, especially along the supply chain within public procured work.

Trade unions and employers' organisations have been less involved in the process, but have instead played a more key role in the past, although variations differ across the individual municipalities as to their involvement. For example, Copenhagen municipality have institutionalized the social dialogue with social partners through the set-up of tripartite consultations where representatives from the local government, trade unions and employers' associations regularly meet to discuss the outcome of the enforcement teams inspections as well as the used enforcement practices. In the other municipalities, the collaboration with social partners is less formalized, but there has also been a long tradition for involving social partners, notably trade unions in the discussions about the usage and enforcement of labour clauses. For example, in the case of Rødovre municipality, there has been a joint collaboration between the municipality and the trade union 3F regarding the enforcement of labour clauses in public procured work within construction that started already back in 2015 and was further strengthened in 2015 following a signed agreement between the two parties (Rødovre Municipality, 2015; 2017). There is also tradition for information meetings hosted by the individual municipalities regarding their call for public tenders, where they also inform about labour clauses and the enforcement of these. In addition, there is a close collaboration between the enforcement team of the cross-municipal inspectorate, trade unions and employers, including the suppliers, which very much is centred around their inspections. For example, the trade unions and the employers have provided advice and, in some instances, even hosted training courses on how to interpret their various collective agreements. Likewise, some employees of the enforcement team are also former trade unionist, indicating the close relations with social partners.

### **Obstacles, constraints, conflicts and learning processes:**

Across the participating municipalities, there have been broad political support across political party lines towards the idea of developing the cross-municipal inspectorate, except for Glostrup Municipality, where the local mayor initially struggled to get the political mandate, but has since then succeeded with securing the political mandate along with a specific budget for strengthening the enforcement efforts. During the policy process, other obstacles have been linked to the regulatory responsibility of local municipalities stipulated within Danish law, data-transfer across municipal borders, notably GDPR regulations and lengthy administrative and political decision-making processes. This has not only delayed the process slightly, but also forced the involved actors to adjust their strategies and come up with alternative ways to succeed with setting-up the cross-municipal inspectorate. In addition, several of the interviewees stated that trust-based relations have been pivotal for the collaboration, notably that the participating municipalities have collaborated in other welfare areas in the past, including within the area of public procurement. This has reportedly eased the process and for example contributed to that there is a broad understanding among the involved parties that the future inspections could potentially be distributed unevenly between the involved municipalities from one year to another, but that there is a general trust that all involved parties will benefit from the collaboration in the long-term.

### **Outcomes and (expected) impact on working conditions**

The cross-municipal inspectorate is still in its early phase and are yet to be fully up and running. It is a pilot project running for the next five years with the intention to make it a permanent solution. The first year of the cross-municipal inspectorate has very much focused on recruiting and training new staff as well as ensuring that the last details are in place before take-off. There is a common understanding among the participating actors that

both small and larger municipalities stand to benefit from the joint collaboration, where resources are pooled, specialized knowledge and enforcement experiences exchanged along with an increased professionalization and systematization of enforcement practices within a policy area that often is less prioritized vis a vis other welfare areas. The fact that several neighbouring municipalities have expressed interests to be part of the cross-municipal inspectorate seems to underpin the potential benefits involved, notably for smaller municipalities. In addition, there is an expectation that the cross-municipal inspectorate will have a sort of preventive effect against social dumping, not least in the light of the past experiences from the Copenhagen control unit, where especially the dialogue-based approach to deal with non-compliance among suppliers seem to have a positive effect on enforcing the labour clauses. However, the specific criteria for success remain unclear and tend to vary across the individual municipalities. For example, several interviewees stressed that a high level of violations in itself may not be a success criterion as it on the one hand may indicate that the cross-municipal inspectorate is highly successful. However, on the other hand the risk-based inspections implicitly provide a biased picture of the public procurement landscape as the inspections primarily target the most troublesome suppliers while the majority of the supplying companies may comply with the intentions of the labour clause. Therefore, the specific success criteria are still to be developed, but a central success criteria raised by several of the interviewees is the notion to secure that the participating municipalities especially their local councils feel that they are getting value for money by joining the collaboration, which seems to be the case at time of writing.

## Lessons

Some of the lessons learned by the involved parties, especially the participating municipalities that by sharing the resources and joining forces, offer possibilities for individual municipalities to invest and professionalise a policy area that otherwise tend to struggle to gain political support vis-à-vis other welfare areas within most Danish municipalities. Labour clauses and their enforcement is rarely considered the primary welfare tasks by most Danish municipalities. This is also reflected by the fact that although nine in ten Danish municipalities apply labour clauses in their public procurement contracts, only one in three Danish municipalities carry out regular inspections and even fewer – 20% - have set up inspectorates to ensure the enforcement of their labour clauses (3F, 2021). In addition, our interview material also suggests that an in-depth knowledge about the local labour market such as local companies, the business structure and local wage and working conditions are pivotal to ensure the enforcement of the labour clauses due to the various local peculiarities. Therefore, many interviewees were also rather critical towards expanding the cross-municipal inspectorate to a nation-wide control unit – aspects that were also highlighted in our other case studies such as the Odense case.

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01/2023	Rødovre Municipality- public procurement unit
02/2023	Hvidovre Municipality – public procurement unit
02/2023	Glostrup Municipality - public procurement unit
02/2023	Albertslund Municipality - public procurement unit
02/2023	Copenhagen Municipality - public procurement unit
02/2023	Copenhagen control unit & Cross-municipal inspectorate
03/2023	3F, national level & local branch Copenhagen area
03/2023	Employers Association, DI, national level

## ***CASE STUDY DK-4: Cross-Municipal enforcement cooperation on Funen***

### **Objectives:**

With the use of labour clauses being a well-established practice in the public procurement of most Danish municipalities (3F, 2021; Kl, 2015), the main challenges lie in the control and enforcement of these clauses as only one in three municipalities regularly carry out inspections of their labour clauses to ensure their enforcement (3F, 2021). Enforcement is especially a daunting task for smaller municipalities as it often requires resources beyond what is considered reasonable compared to the size of the contracts that should be enforced. It is mainly the larger municipalities with a larger volume of public procurement that establish specialized enforcement practices. One such unit is established in the Municipality of Odense on the island of Funen. Odense is the third largest city in Denmark and has the procurement volume that makes the establishment of a specialized enforcement unit economically more feasible. The unit has a field officer, who drives around to the different places where procured services are delivered and talks to employees about their working conditions. The field officer reports back to the units three office workers, who based on the information provided by the field officer pick up cases for targeted control. These controls consist of requiring documentation from the companies, additional visits by the field officer, and in-depth control by other means, which is also outlined and required by the joint labour clause used by all the involved municipalities. As the unit head explained, they may also use surveillance footage and access-key logs to document when workers come and go, thus allowing them to check whether working-time and breaks are reported accurately. These controls have proven quite effective in Odense and have allowed the municipality to reveal labour clause violations. In cleaning, the control unit's documentation of the substantial labour clause violations has among others led the municipality to in-source cleaning after periods with outsourcing.

However, while a large municipality like Odense has the financial means and administrative capacity to set-up an effective enforcement practice, this poses some challenges for the smaller municipalities as the enforcement of their labour clauses risks becoming purely formal desk research of documents with little genuine effect. The procurement volume of these municipalities is simply so low that establishing a unit for control and enforcement would be overkill. As an interviewee explained, Odense has a procurement budget of a size similar to that of 4-5 other municipalities on Funen.

Yet in recent years, the nine municipalities on the Island Funen decided first to apply a common labour clause in all publicly procured work in 2014 and since then five of the nine participating municipalities started to experiment with developing a cross-municipal enforcement cooperation. This subsequently led to the Odense municipality starting to offer smaller municipalities the possibility to buy enforcement services from Odense's enforcement unit in 2016. Rather than hiring two specialized enforcement officers per municipality, the smaller municipalities have the opportunity to buy specialized enforcement capacity to an extent that fits their needs. So far, five smaller municipalities have joined the cross-municipal enforcement collaboration.

The objective of the experimentation is thus to find a way to turn labour clauses into effective regulation by combining specialized enforcement capacity with a minimized resource usage by the smaller municipalities. The cooperative enforcement efforts address all the protective gaps addressed by the labour clause, and both workers and municipalities stand to benefit from the experiment.

## Situation before the experimentation

Prior to 2014, the municipalities of Funen either had no labour clauses or had their own individual standard for what a labour clause should contain and hardly any of the participating municipalities conducted regular inspections to ensure that suppliers complied with the labour clauses. In 2014, however, the mayors of all Funen’s municipalities decided to develop labour clause to apply to all public procurement on the island. As an interviewee explained: “We wanted it to be easier for the service providers. You very quickly cross a municipal border when you operate as a company on Funen, and it really shouldn’t make a difference on the demands we pose in terms of labour clauses” (Interview Enforcement Unit - Odense, 10/2023). A joint centre for public procurement of goods was also established in an effort to gain greater price benefits via joint procurement. On a formal level, there was thus an increased institutionalization centralisation and homogenization of the procurement practices and labour clauses throughout Funen’s municipalities that also was accompanied with increased professionalization of this policy area. In practices, however, differences in both procurement and enforcement practices persisted, not least regarding the enforcement of the joint labour clause. While the largest municipality of Fyn – Odense- set up a new control unit dedicated to enforcing labour clauses in 2016, the other municipalities often relied on companies to abide by the clauses with limited if any genuine control mechanisms to ensure compliance. There was also a notion among some of the municipalities that the trade unions would deal with any examples of social dumping if suspecting violation of the labour clauses.

Since there was limited if any control within in the smaller municipalities, it is unclear to what extent companies did abide by the labour clauses, although there had been a few cases within public procured construction and cleaning services where the individual municipalities had detected violations of the labour clauses after receiving anonymous call or social media stories. However, when starting to inspect, the control efforts in Odense revealed that several instances where companies violated the labour clauses, and since many of these companies operated across all of Funen, it seems likely that labour clauses were also violated in the smaller municipalities. Furthermore, some of the smaller municipalities experienced media reports about underpayment and the like in the local press. Additionally, as an interviewee explained: “If we require the companies to observe these labour clauses, we also owe it to them to follow up on whether they actually do it. The service providers themselves wanted this to happen, so they know their efforts are not in vain” (Interview local government official, 10/2022). Enforcing the labour clauses also helped the local companies that abide by the labour clauses in their competition with firms that do not to win tenders. Without effective enforcement, dodgy companies can sign the labour clause without complying with it, which can leave companies that do comply at a disadvantage.

## Origins of the experimentation

There was no major event or critical juncture that produced the experimentation of cooperation on enforcement. However, the lobbying campaign by Danish trade unions on labour clauses during the 2014 municipal election may have had a large influence on developing the control and enforcement unit. Nor have changes to the EU rules on procurement had any particular impact. Rather, the experiment was the result of an ongoing dialogue between all the mayors from the nine municipalities on Funen within the informal ‘Forum for Mayors of Funen’. First, the Mayors agreed that a common labour clause for all Funen’s municipalities would be beneficial—especially for local companies that would have to abide by the same labour standards regardless of which municipality they delivered services to. After the common labour clause was adopted in 2014, the dialogue between mayors continued. In Odense, a control and enforcement unit was established in 2014. It was the first designated unit of its kind among Danish municipalities. Based on the ongoing dialogue among Mayors, the Mayor of Odense in 2016 offered the other municipalities to buy into the enforcement activities of this

enforcement unit, and their buy-in would allow the unit to hire additional employees. The idea of a cross-municipal collaboration was the first of its kind in the country.

### **Actors, strategies and resources involved**

The municipal cooperation on labour clause enforcement has mainly involved the formal cooperation between the smaller municipalities' procurement units and Odense's specialized enforcement unit. Trade unions and employers' associations have only been involved to a limited extent and the same applies to other public authorities. From the point of view of Odense' enforcement unit, the cooperation has not caused any substantial changes in their tools or strategies, but only an expansion of the geographical area cover and some additional collaborative meetings with the procurement units of the smaller municipalities. For the procurement units of the smaller municipalities the cooperation has not involved major changes in their practices either. This is because they had almost no control of labour clauses before the cooperation. However, from the perspective of labour clause enforcement the cooperation involves a major change because labour clauses are now enforced in the smaller municipalities.

As a procurement officer in one of the smaller municipalities:

*“Before we entered into this cooperation, we had some notifications from the trade union, who suspected that specific companies were not complying with the intentions of the labour clause. That raised the issue of ‘what do we do’? It turned out to really require an enormous amount of effort, and we ended up hiring an external accountant company to investigate it. Afterwards we outlined the choices for going forward to the politicians. We could establish our own internal unit, rely on accountant companies or engage in this join cooperation (...). From the administration we were in favour of the cooperation because it made sense to build up some knowledge and expertise internally rather than relying on external accountants. And doing it ourselves...Well, we only have 60.000 citizens, whereas Odense is a completely different story”. Thus, the aim was to build up expertise to be less reliant on external accountants, but that kind of expertise-building required a volume that the smaller municipalities did not have.*

*“One of the smaller municipalities would maybe assign 1/8 annual work to this enforcement, but that just does not work because you have to focus on this every day and have a deep understanding of what is going on. (...) Our field officer has to come continuously to find out what is going on (...). If our field officer gets a suspicion, we look at the company – do we know the company or do we know the people behind it from previous cases. We go through all the documents, the pay slips, employment contract, etc. and compare it with what our field officer tells us”. This combination of continuous presence in the field and expertise in requiring and scrutinizing documents is not going to occur if enforcement is only a small part of the municipal employees' job description.*

In practices, it is the procurement units of the smaller municipalities that decide, which procured services they want inspected. However, the decision is typically taken in close dialogue with the enforcement unit due to the unit's substantial experience with identifying the types of service at risk of labour clause violations. In the everyday work, the enforcement unit is the dominant driver of the enforcement efforts. However, once the field officer reports about potential violations, or if actual violations are discovered by the enforcement unit, it is the municipal procurement unit that decides whether the case should be taken further. Both the enforcement unit and the municipalities' emphasise that the enforcement efforts are dialogue based. This implies that rather than imposing fines on companies or cancelling their contracts, the focus is on engaging in a dialogue with the companies to make them aware of the violations and request that they correct them. Cancellation of a contract due to labour clause violation is a possibility, but this is not only problematic for the (local) company, but also for

the municipality, which is without a service provider. Thus, the emphasis on dialogue is perceived as a way through exchange of good practices to teach the companies how to behave. Nevertheless, in some cases the municipalities will decide to issue a fine to the supplying companies or even cancel the contract and ensure that workers get their outstanding remuneration by following up on the individual cases. This was the case in Odense, where it was inspections by the control unit that led the municipality to insource their various cleaning services due to severe violations of the labour clause. Yet, this is ultimately the decision of the procurement unit of the smaller municipality, not the enforcement unit.

### **Obstacles, constraints, conflicts and learning processes:**

Overall, there seems to be very few conflicts and obstacles regarding the experimentation with municipal cooperation on enforcement. The experiment has emerged out of a dialogue between the mayors in the different municipalities on the Danish Island Funen, and it has been optional for the smaller municipalities to join the enforcement unit as well as decide how much enforcement service they wanted to purchase. These conditions can point to potential latent conflicts. On the one hand, approximately half of the Funen's small municipalities have not joined, which may indicate that not all find the cooperation an attractive option. One interviewee explained that the economic cost and a belief in trade unions ensuring enforcement had made his municipality opt out of the joint enforcement, while still being part of the joint labour clause. On the other hand, the smaller municipalities setting the budgetary parameters for how much control should be provided by the enforcement unit could also be a source of conflict as the enforcement officers may feel that certain problem areas are neglected. However, no such conflicts seem to have emerged thus far.

Regarding trade unions and employers' lack of involvement, it has already been mentioned that the labour clauses are in potential conflict with the traditional way of regulating the Danish labour market. Our interviews indicate that the trade unions seem to have very little vested interest in the labour clause enforcement and having few tools or resources to obtain or enforce collective agreements within for example the cleaning sector. Thus, interviewees reported that trade unions seem to be quite happy with the enforcement units' effort to get things under control. At the same time, one interviewee also implicitly criticizes the trade unions for not caring enough about non-members: "They only pick up cases for their members, but we want everyone working for us to have decent wages and working conditions" (Interview local government representative, 10/2022).

With regard to national or EU regulation standing in the way of the experiment, or the enforcement efforts more generally, none of the interviewees found this to be the case. One interviewee noted that the rules are not always sufficiently clear, and that it was often difficult to obtain clarity from the ministry. In these cases, Odense municipality often opted for going to the edge of what is allowed, typically because they could not wait for the relevant authorities to respond. This applied for example in the case of Odense Municipality deciding to insource their cleaning activities following a series of violations of their labour clause reported by the control unit. The municipality wanted initially to apply the collective agreement covering cleaning activities in the public rather than private sector in their labour clauses used in public tenders due to lower work phase in the public sector agreement. They subsequently turned to the relevant authorities for clarifications, but without any replies and decided after much debate and legal advice from other entities to insource their cleaning activities rather than testing the legality of referring to public sector agreements in their labour clause.

## **Outcomes + (expected) impact on work**

In terms of outcome, it is hard to make a clear assessment because none of the smaller municipalities had an established enforcement practices prior to the cooperation. As an interviewee observed: “If you don’t look for the problems you probably will not find them”. Thus, there is no clear baseline to compare the current situation with. Interviewees in the smaller municipalities report that there have been no or only in which sanctions have been given. However, the enforcement unit interviewees report that fines are actually give quite often – either for none-compliance with the labour clause standards or for simply failing to deliver documentation on time. Interviewees agree that the increasing chance of being controlled may well have incentivized some service providers to care more about observing the labour clauses.

From the point of view of the participating municipalities, the cooperation is assessed as a great success. First, the smaller municipalities now have an enforcement practice to follow up on the labour clauses they impose on their service providers. Second, that enforcement practice is both cost-efficient and based on accumulating, in-house expertise. Third, for the enforcement unit in Odense the cooperation has meant an expansion of its functioning, which allows it to develop its expertise and enforcement practices further.

For these reasons, all interviewees indicated that the cooperation had come to stay. There are still municipalities on Funen that have not joint, but they may do so in the future, just as the ones that have joint may upscale the enforcement they buy from Odense. However, the expansion of the cooperation which has occurred is somewhat surprising. The municipality of Høje Taastrup in the middle of Zealand has recently decided to participate in the cooperation despite being geographically somewhat far away and much closer to a similar, but also slightly different experiment between Copenhagen municipality and some of its surrounding municipalities (see CASE STUDY DK-3).

As noted, it is hard to assess the overall effect of the cooperation due to a lack of a baseline. However, the enforcement cooperation can be considered a successful experiment as it brings enforcement of labour clauses to municipalities that would either have too few resources to make it effective or would have to rely on external accountants with no specialized expertise in this area. The latter option is quite costly and would typically only be used in situations where trade union pressure or media attention caused awareness of problems as seen in the past in some of the municipalities. With the social dialogue model, control and enforcement is occurring on a continuous basis. Obviously, this does not imply that the experiment has solved all problems regarding the effective functioning of labour clauses, but it does seem to provide a step in the right direction.

## **Lessons**

There are some valuable lessons to be drawn from the municipal cooperation on labour clause enforcement on Funen. Enforcement is costly and requires the building up of expertise in the form of knowledge and best-practices. For smaller procuring entities, the cost of this enforcement easily outweighs what seems rational compared with the extent of procurement made. Thus, making joint enforcement units that can control and enforce on behalf of more than one procuring entity seems like a good way to make resource efficient enforcement.

We have dwelled little on the dialogue-based approach practiced under this enforcement regime, but that might also be interesting to outline. Engaging in dialogue rather than only issuing fines is meant to educate companies about their obligations while ensuring a continuation of service provision. The pragmatism implied in this approach is also a potential lesson.



That said, there may be limits with regard to the extent of cooperation. The common labour clause that has been developed through an informal dialog between mayors and the sense of belonging to a common geographical area (Funen) has been a vital precondition for the enforcement cooperation. This point was raised by the enforcement unit officers in relation to the new initiative of making control and enforcement for a municipality of Zealand. While this expansion of the geographical scope of the enforcement efforts was seen as testament to the unit’s success, there was also a concern that the extended transport time would make the unit’s enforcement efforts less efficient.

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### List of interviews:

02/2022	Employers Associations and interest organisation for Local Government Denmark, KL, national level
03/2022	Employers Association, DI, national level
10/2022	Kerteminde municipality – public procurement unit
10/2022	Svendborg municipality, public procurement unit
10/2022	Nyborg Municipality, public procurement unit
10/2022	Odense municipality, Control and enforcement unit
10/2022	Assens municipality, Public procurement unit
01/2023	Fåborg municipality, public procurement unit
02/2023	3F, Local union branch, Funen

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## List of Interviews

03/2023	<b>3F (United federation of Workers in Denmark)</b> , national level & local branch Copenhagen area
03/2023	<b>Employers Association, DI</b> , national level
02/2023	<b>Copenhagen control unit &amp; Cross-municipal inspectorate</b>
02/2023	<b>Hvidovre Municipality</b> – public procurement unit
02/2023	<b>Glostrup Municipality</b> - public procurement unit
02/2023	<b>Albertslund Municipality</b> - public procurement unit
02/2023	<b>Copenhagen Municipality</b> - public procurement unit
02/2023	<b>3F (Union Federation of Workers in Denmark)</b> , Local union branch, Funen
01/2023	Rødovre Municipality- public procurement unit
01/2023	<b>Fåborg Municipality</b> , public procurement unit
11/22	<b>Danish National Task Force for Labour Clauses 1</b> , Chief operating officer
11/22	<b>Danish National Task Force for Labour Clauses 2</b> , CSR consultant, inspector, conducting inspections
11/22	<b>Danish National Task Force for Labour Clauses 3</b> , CSR consultant, inspector, conducting inspections
12/22	<b>Ministry of Employment</b> , Head of section, involving in legislation on labour clauses and other industrial relations issues
12/22	<b>Danish National Task Force for Labour Clauses 4</b> , CSR consultant, inspector, conducting inspections
12/22	<b>Danish Trade Union Confederation (FH)</b> Lawyer, working on public procurement and related issues
10/22	<b>Agency for Public Finance and Management - Ministry of Finance</b> , Governmental Supply, policy and Contract Controlling of Legal Services, Chief Consultant
10/2022	<b>Svendborg Municipality</b> , public procurement unit
10/2022	<b>Nyborg Municipality</b> , public procurement unit
10/2022	<b>Odense Municipality</b> , Control and enforcement unit
10/2022	<b>Assens Municipality</b> , Public procurement unit
10/2022	<b>Kerteminde Municipality</b> – public procurement unit
10/22	<b>The security worker’s union (VSL)</b> , senior consultant
03/2022	Employers Association, DI, national level

02/2022	<b>Employers Associations and interest organisation for Local Government Denmark</b> , KL, national level
1/22	<b>3F private services</b> , (United Federation of Workers in Denmark), vice chair in cleaning and private service, working on labour clauses
1/22	<b>The security worker's union (VSL)</b> , senior consultant and chair person
1/22	<b>Confederation of Danish Industries</b> , Service Branch Director
1/22	<b>3F Construction</b> , (United Federation of Workers in Denmark), vice chair in construction, working on labour clauses
1/22	<b>Agency for Public Finance and Management - Ministry of Finance</b> , Governmental Supply, policy and Contract Controlling of Legal Services, Chief Consultant