



MANUAL

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RULES ON RESIDENCE AND WORK IN DENMARK FOR CITIZENS FROM THE NEW EAST EUROPEAN EU MEMBER STATES



GLOSSARY

EU enlargement	On 1 May 2004, the following ten countries became members of the European Union: Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic and Hungary.
Free movement of labour	The EU rules give workers in the individual EU Member States the right to move freely among the EU Member States for the purpose of seeking and obtaining paid employment, cf., however, the national transitional scheme.
EU/EEA citizens	The EU rules on free movement apply to citizens in the 25 EU Member States, the three EEA Member States (Norway, Iceland and Liechtenstein) and Switzerland. However, a special national transitional scheme applies to workers from the eight new East European EU Member States.
The national transitional scheme	As per 1 May 2004, Denmark has introduced a transitional scheme for free movement of labour from the eight new East European EU Member States: Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic and Hungary. This means that citizens from these countries may not take up employment in Denmark until they have obtained a residence permit from the Danish Immigration Service.
Residence permit to workers	The Danish Immigration Service will issue a residence permit to citizens from the new East European EU Member States if they have an offer of full-time employment with an employer in Denmark at ordinary pay and working conditions. The employer must be registered with the national customs and tax authorities and be liable to withhold tax under the Act on Taxation at the Source and must not be affected by a lawful industrial dispute. The residence permit will be revoked if the person concerned loses the job on the basis of which the residence permit was granted.
Free movement of services	The EU rules give citizens from the EU Member States the right to provide services across national borders within the European Union and in this connection they have a right to stay in another EU Member State. The rules on freedom to provide services apply to all EU citizens, including citizens from the eight new East European EU Member States.
Freedom of establishment	The EU-rules give citizens from the EU Member States a right to set up a business in another EU Member State and in this connection they have a right to stay in another EU Member State. The rules on freedom of establishment apply to all EU citizens, including citizens from the eight new East European EU Member States.
Posting of workers	In connection with the provision of services in another country an undertaking may choose to post employees. The posting must be temporary and aimed at the specific service which the undertaking is providing. The posted workers are covered by the EU Directive on posting of workers which in Denmark has been implemented by the Act on posting of workers. Posted workers from the eight new East European EU Member States are not required to hold a residence permit under the provisions laid down in the transitional scheme.
Temporary workers	If citizens from the eight new East European EU Member States are posted by a temporary employment agency to work in Denmark, they must hold a residence permit under the provisions laid down in the transitional scheme.
Residence permit to posted workers	If posted workers from the eight new East European countries are posted for a period exceeding three months, they must apply to the Danish Immigration Service for a residence certificate. A residence certificate will be issued if the Immigration Service finds that it is a matter of posting of workers. In this connection, the ordinary wage requirement does not apply as it does to migrant workers from the new East European EU Member States that are covered by the national transitional scheme.
EU/EEA residence certificate	The state county authorities will issue EU/EEA residence certificates to citizens from the eight new East European countries who are staying in Denmark for more than three months as: <ul style="list-style-type: none">- self-supporting persons- self-employed persons who have set up a business in Denmark- providers of services- students- family members to the above-mentioned persons.

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1:

WELCOME TO THE TEN NEW EU MEMBER STATES 

On 1 May 2004, ten new countries (Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic and Hungary) became members of the European Union.

Like other EU citizens, citizens from these countries have a right to work in Denmark. However, a special transitional scheme applies to the eight new East European EU Member States – Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, the Czech Republic and Hungary – which ensures a phased transition to the general set of EU-rules on free movement of labour. The general rules applying to EU citizens apply to Cyprus and Malta without restrictions.

There are no transitional schemes as regards the general EU rules concerning freedom of establishment, free movement of services and posting of workers within the framework of provision of services. Here the same rules apply to all EU citizens.

Any foreigner who is working in Denmark should make sure that he or she has a right to do so. If a foreigner is working illegally, the foreigner and the employer may be punished. This applies to both citizens from the new EU Member States and to other foreigners.

Guide to the use of the manual

This manual describes the rules under which citizens from the eight new East European EU Member States may lawfully stay and work in Denmark.

The purpose of this manual is to clarify the rules in this very complex field. The aim is to give a survey of the conditions and rights attached to certain types of residence in this country.

An EU citizen may, inter alia, stay in Denmark on the following basis:

- As a tourist
- As a self-supporting person
- As a student
- As an intern
- As a jobseeker
- As an employee
- As a posted worker within the framework of posting of workers
- As a self-employed person
- As a provider of services
- As a family member to an EU citizen who is staying lawfully in Denmark.

The manual is a tool to be used by citizens and undertakings as well as by relevant authorities and organisations in cases where doubt may arise about the basis for staying in Denmark of a citizen from one of the new East European EU Member States. The aim is to give a description of the information which should be available in order to document the basis on which an EU citizen is staying in Denmark. Furthermore, the emphasis has been on clarifying roles and responsibilities among various authorities in connection with an assessment of the residence basis.

The manual includes a table which sets out the conditions and requirements to registration in connection with different types of residence. The legal basis for staying in Denmark is indicated in the individual sections. The manual starts with a glossary and a list of relevant contacts can be found at the last page of the manual.

The manual aims at contributing to the strengthened cooperation among relevant authorities and in the established regional networks concerning illegal work. An electronic version of the manual can be found at the website www.bm.dk/ophold. It will be updated on a current basis.

2:

RESIDENCE AS A TOURIST



Legal basis

Article 2 (1) of the Aliens Act.

Conditions and rights

Citizens from the eight new East European EU Member States may - like other EU citizens - stay in Denmark as tourists for up to three months without special permission. A tourist must not be a burden to the host country and will have no right to social benefits during the stay. However, tourists have a right to acute medical/hospital treatment. A person who wishes to stay in Denmark for more than three months is required to have a special basis for staying. These types of residence basis are described in the following sections.

Requirements to documentation

EU citizens who are staying in Denmark as tourists must be able to identify themselves and to document their citizenship in the form of an identity card/passport at the request of the police.

Access to the labour market

Citizens from the eight new East European EU Member States who are staying in Denmark as tourists are not allowed to take up employment.

3:

RESIDENCE AS A SELF-SUPPORTING PERSON



Legal basis

Section 6 of the Aliens Act, cf. section 3 of the EU/EEA Order.

Conditions and rights

EU/EEA citizens who wish to stay as self-supporting persons for more than three months in Denmark must apply for an EU/EEA residence certificate with the state county authorities.

The state county authorities will issue a residence certificate if the person concerned can document that he or she disposes of financial means or has an income which, as a minimum, corresponds to the social benefits that can be obtained under section 25 (12) and section 34 of the Act on an Active Social Policy. The residence certificate is issued for a period of five years unless the application is for a shorter period.

The state county authorities require documentation to the effect that the person concerned is able to support himself/herself and his/her family for 15 months. The residence certificate will state: "The holder of this certificate shall be able to support himself/herself and his/her family; otherwise the residence certificate may be revoked".

Access to the labour market

Citizens from the eight new East European EU Member States who are issued with an EU/EEA residence certificate as self-supporting persons are not allowed to take up employment in Denmark without holding a residence permit according to the provisions in the transitional scheme.

4:

RESIDENCE AS A STUDENT



Legal basis

Section 6 of the Aliens Act, cf. section 2 of the EU/EEA Order

Conditions and rights

The Danish Immigration Service will grant a residence permit to EU/EEA citizens who are enrolled for courses in the form of basic education, youth education or a folk high school.

The state county authorities will grant a residence permit to EU/EEA citizens who are enrolled for formally qualifying vocational training courses or vocational education.

The state county authorities may make it a condition for granting an EU/EEA residence certificate that the person concerned takes out a health insurance policy which will cover until he/she will be entitled to public health insurance.

It is a condition that the person concerned declares that he/she disposes of sufficient means to ensure that he/she will not be a burden to society.

The residence certificate is issued for the duration of the education activity, but as a maximum for one year at a time.

The residence certificate will state: "The holder must be able to support himself/herself and his/her family; otherwise the residence certificate may be revoked".

Access to the labour market

Citizens from the eight new East European EU Member States who are staying in Denmark as students following a formally qualifying education are not allowed to take up employment unless they have obtained a separate work permit from the Danish Immigration Service.

Generally, staying in Denmark as students following basic education, youth education or folk high school education will not give the persons concerned access to the labour market.

5: RESIDENCE AS AN INTERN



Legal basis

Section 9 c (1) of the Aliens Act and Section 34 (2) of the Aliens Order.

Conditions and rights

The Danish Immigration Service may issue a residence permit to foreigners, including citizens from the eight new East European Member States, who wish to stay in Denmark for a period in order to complete an internship.

Residence permits to interns will, as a maximum, be granted for a period of 18 months. The residence permit may be prolonged for a further period of six months if the intern during this period goes through relevant theoretical training, i.e. at a technical school or an agricultural school.

Residence permit as an intern may be granted if certain educational reasons warrant it. The residence permit will be granted on the basis of a concrete and documented offer of an internship at a specified place of internship in Denmark. Furthermore, the following conditions must be satisfied:

1. The internship must have as an objective to supplement an educational program which the intern has commenced or completed, and the internship must have a natural connection to that program.
2. The applicant must be at least 18 years of age and must not yet be 35 years of age.
3. The place of internship must be suited to accommodate the intern during the period – also in relation to the educational purposes of the internship.
4. Pay and working conditions must correspond to the usual terms and conditions applying to interns in Denmark in the sector concerned.

Requirements to documentation

Citizens from the eight new East European countries who are staying in Denmark as interns must be able to identify themselves and show a valid residence permit issued for their internship in Denmark. The police may also contact the Danish Immigration Service and request to see the information form concerning the internship. The information form contains a description by the place of internship of the content of the educational training and work tasks of the intern.

Access to the labour market

The residence permit to interns is issued for a specific internship at a specific place of internship. Interns are not allowed to take up other work in Denmark unless they have obtained a special residence permit to do so in accordance with the rules laid down in the transitional scheme.

6:

RESIDENCE AS A JOBSEEKER



Legal basis

Section 2 (1) of the Aliens Act.

Conditions and rights

Citizens from the eight new East European EU Member States who are seeking work may – like other EU citizens – stay in Denmark as jobseekers for six months without special permission.

EU citizens who are looking for a job must be able to support themselves and their right to stay in Denmark will lapse if they apply for social assistance. EU citizens looking for a job may export their unemployment benefits from their home country. They are also entitled to counselling from the public employment service while looking for a new job.

Requirements to documentation

EU citizens staying in Denmark as jobseekers must be able to identify themselves and to document their citizenship in the form of an identity card/passport at the request of the police.

Access to the labour market

Citizens from the eight new East European EU Member States who are staying in Denmark to look for a job are not allowed to start working until the Danish Immigration Service has granted them a residence permit on the basis of a specific offer of employment - see section 7 for more details.

EXAMPLE

A nurse from Lithuania comes to Denmark to look for work at hospitals in Jutland. The nurse has saved enough money at home to support herself until she has found a job. She must not start working until she has been granted a residence permit by the Danish Immigration Service in accordance with the provisions laid down in the transitional scheme.

7: RESIDENCE AS AN EMPLOYEE



Legal basis

Section 9 a (5) of the Aliens Act.

Conditions and rights

Citizens from the eight new East European EU Member States may obtain a residence permit from the Immigration Service if they are offered full-time employment at pay and working conditions laid down by collective agreements or otherwise on pay and working conditions that are in a Danish context. It is a condition that the employer is registered with the national customs and tax authorities and is liable to withhold tax under the Act on Taxation at the Source. Furthermore, the employer must not be affected by a lawful industrial strike.

The persons are not allowed to start working until the Danish Immigration Service has granted them a residence permit.

It will appear from the residence permit that the permit may be revoked if the basis for its issue is incorrect or no longer exists. The foreigner is required to contact the Danish Immigration Service if the employment relationship is terminated or if the terms of employment are significantly changed.

The permit only applies in respect to the employment relationship for which it was issued. A foreigner may not start in a new job until he/she has obtained a new residence permit from the Danish Immigration Service.

If the foreigner becomes unemployed, he/she will have a right to stay in Denmark as a jobseeker for a job search period of six months if he/she is able to support himself/herself. See section 6.

Requirements to documentation

Citizens from the eight new East European EU Member States who start working in Denmark must be able to identify themselves and show a valid residence permit if asked by the police. The residence permit may be a residence card issued by the Danish Immigration Service or a letter from the Immigration Service stating that a residence permit has been granted.

Working without the required residence permit

If a citizen from one of the eight new East European EU Member States starts to work for an employer in Denmark without having a residence permit from the Danish Immigration Service, it is a matter of illegal work which

may be punished under the rules laid down in the Aliens Act. The same will apply if the employment contract, the job description or the pay and working conditions deviate substantially from the basis on which the specific residence permit was granted.

If it is suspected that a citizen from one of the eight new East European EU Member States is working without a valid residence permit, this may be reported to the police.

If the police finds that there is a basis for investigating the case, the police may request to see pay slips and accounts. The police may also request the Customs and Tax Administration (ToldSkat) and the Immigration Service for information to be used in connection with the investigation.



INVESTIGATION IN CONNECTION WITH REPORTS ON ILLEGAL WORK: EMPLOYEES

Requirements to the undertaking Pay and working conditions should essentially correspond to those on the basis of which the residence permit was granted.

Requirements to the foreigner The foreigner must hold a residence permit from the Immigration Service for the work concerned.

Investigation themes

- Has the work been started without the employee holding a residence permit?
- Do the actual pay and working conditions deviate substantially from those on the basis of which the residence permit was granted?
- Does the work correspond to the work for which the residence permit was granted?

Relevant documentation

- The residence permit
- Wage data from the Customs and Tax Administration
- Copies of pay slips
- The employment contract of the employee.

EXAMPLE

A Danish undertaking offers two Polish workers a job. The work is for 37 hours per week, i.e. a full-time job. Pay and working conditions are regulated by a collective agreement. Polish citizens are covered by the new rules laid down in the transitional scheme and are required to hold a residence permit in accordance with these rules.

If the undertaking is not covered by a collective agreement, the Polish citizens are to be offered pay and working conditions which correspond to the level for other employees in the undertaking who perform similar work.

If the undertaking is not covered by a collective agreement and if it has no employees performing similar work, the undertaking is to offer the Polish citizens the pay and working conditions which are normal in the regional area for the type of work concerned.

RESIDENCE PERMIT ACCORDING TO SECTION 9 A (1) OF THE ALIENS ACT

The Immigration Service may still issue residence permits to citizens from the eight new East European EU Member States according to the general rules laid down in the Aliens Act concerning the granting of residence permits on the basis of employment, i.e. according to the rules that apply to third-country nationals, cf. section 9 a (1) of the Aliens Act. According to these rules, the general principle is that a residence permit will only be granted if there is no local labour capable of taking on the work in question. As regards citizens from the eight new East European EU Member States, the general rules laid down in the Aliens Act concerning the granting of residence permits on the basis of employment will, in particular, be relevant in cases where it is not a matter of a full-time job.

8:

RESIDENCE AS A POSTED WORKER



Legal basis

The case law of the European Court of Justice, cf. case C113/89 (Rush) and case C-43/93 (Vander Elst). Directive of 16 December 1996 concerning the posting of workers in the framework of provision of services. Consolidation Act No. 755 of 30 June 2004 on posting of workers.

Conditions and rights

An undertaking which is established in an EU Member State (the sending country, i.e. the country where the posting undertaking is established) may bring in or post its own workers (including non-EU citizens) if the undertaking is providing services in another EU Member State.

No transitional rules apply in this field. (Reference is, however, made to the fact box on temporary employment agencies).

The following conditions must be satisfied if a posted worker from one of the eight new East European EU Member States is to be exempted from the requirement to hold a residence permit under the provisions in the transitional scheme:

1. The worker must be permanently employed in the posting undertaking. It is thus not sufficient that the posted worker has a loose attachment to the posting undertaking as a temporary worker, casual worker, etc.
2. The worker must - before being posted - have been staying lawfully in the sending country and have had a right to work there.
3. The worker must satisfy the rules laid down in the Aliens Act concerning immigration and residence, i.e. be exempt from the duty to have a visa or hold a visa or a residence permit. If the worker is posted for a period not exceeding three months, this condition is automatically fulfilled for workers who are also EU citizens as they are not required to have a visa.
4. The worker must have the possibility of returning to the home country or the sending country when the work has been completed and must have the intention to do so. If the worker is a citizen of an EU Member State, he/she will always have the possibility to return to this country.

A foreign employer who posts workers to Denmark must at any time comply with the requirements laid down in the Act on Posting of Workers concerning the terms and conditions of employment.

1

SPECIAL RULES FOR EMPLOYEES TEMPORARY EMPLOYMENT AGENCIES

It follows from the case law of the European Court of Justice that persons posted by a temporary employment agency are to be treated as other foreign employees as the purpose of the posting is to bring the temporary workers into the labour market of the country where the temporary work is to be performed. This means that citizens from the new East European countries who are posted by a temporary employment agency to perform temporary work in Denmark are required to hold a residence permit according to the rules laid down in the transitional scheme, cf. section 7.



Requirements to registration of the undertaking

An undertaking that is not established or represented in Denmark, but wishes to provide services here must, as the main rule, be registered with the Customs and Tax Administration (ToldSkat) - Sønderborg at the latest eight days before the provision of services starts.

In connection with the VAT registration, the Customs and Tax Administration may – after an evaluation of the individual case – request the undertaking to produce the following information:

- Expected turnover in Denmark.
- Copy of contracts concluded concerning work and tenders for work in Denmark.
- Number of employees.
- The nature of the work and for whom the work is to be performed.
- Copy of the VAT registration certificate from the home country.

Registration of posted workers through the use of forms E 101

In the future Denmark will receive a copy each time another EU Member State issues a form E 101 to persons who

are to be temporarily posted to Denmark. These procedures are expected to take effect in the autumn of 2005. The form contains data about the posted workers and the sending undertaking. Such information may form part of an assessment as to whether the posting is in individual cases in accordance with the rules. (Reference is also made to fact box 2).

Posting for more than three months

If the posted citizen from one of the eight new East European EU Member States is staying in Denmark for more than three months, he/she must apply to the Danish Immigration Service for a residence certificate.

The certificate will be granted if conditions 1, 2 and 4 above are satisfied.

In this connection the Danish Immigration Service may request documentation showing that the foreigner is a permanent employee in the sending undertaking. The granting of a residence certificate in connection with posting of workers will not be conditional upon compliance with other conditions – such as a minimum wage. (See also fact box 4).

2

FORM E 101

The rules concerning the form E 101 are laid down in EEC Regulation 1408/71. This form is used as documentation to show which country's law concerning social security will apply to persons who are posted to work temporarily in another EU Member State.

Form E 101 contains, inter alia, the following information: (a) name, address, date of birth, nationality of the posted person, (b) name, address, registration number of the posting undertaking, (c) information about the workplace during the period of posting, and (d) the period of validity of the form.



Is an alleged posting de facto an employment relationship with an employer in Denmark

If a foreigner from one of the eight new East European EU Member States is de facto employed by an employer in Denmark or is posted through a temporary employment agency, he or she will not have a right to work without first

having obtained a residence permit under the provisions laid down in the transitional scheme. This applies from the first day of the stay in Denmark irrespective of the fact that the posted workers are only required to apply to the Danish Immigration Service for a residence permit in connection with stays in Denmark for a period exceeding three months.

EXAMPLE

The use of temporary workers:

A Danish market gardening hires 10 Polish berry-pickers from a Polish temporary employment agency. The price of the labour is settled per spent working hour and at a previously agreed hourly rate which will appear from the contract between the Danish and the Polish undertaking. The Danish gardening has the right to control and direct the work in relation to the berry-pickers, and it also decides where the berries should be picked and approves the quality of the berries. The Danish gardening must pay A-tax (tax deducted from income at source), AM contributions (labour market contributions) and SP contributions (special pension savings).

- The Polish berry-pickers must hold a residence permit under the provisions laid down in the transitional scheme.
- The Polish temp agency is not required to register with the Danish Customs and Tax Administration, nor does it is liable to pay VAT of its income.
- The Danish gardening must pay VAT on behalf of the Polish temp agency.
- The Danish gardening must pay A-tax of that part of the bill from the Polish temp agency which can be attributed to the pay to the berry-pickers.

3

POSSIBILITIES FOR OBTAINING INFORMATION FROM FOREIGNERS AND UNDERTAKINGS

Under section 40 (1), first sentence, of the Aliens Act a foreigner shall provide such information as is required for deciding whether a residence permit can be issued or revoked or can lapse, or whether the foreigner is lawfully staying in Denmark. This provision is generally interpreted to apply also to EU citizens.

It further follows from section 40 (1), fourth sentence, of the Aliens Act that other persons who are deemed able to contribute with information relevant for the examination of the case can be ordered to give such information.

Pursuant to section 16 (2) of the Aliens Act anyone having a foreigner in his employ shall on request provide the competent authority with the data required for establishing whether the foreigner is lawfully working in Denmark.



Doubts as to whether it is actually a case of posting of a worker

If a worker from one of the eight new East European EU Member States is not permanently employed in the posting undertaking, the worker is required to apply for a residence permit in accordance with the rules laid down in the transitional scheme. The same applies to workers from the eight new East European EU Member States who are employed by a temporary employment agency or a firm which has been set up for the purpose of violating the rules laid down in the transitional scheme.

On request from the Police, the Danish Immigration Service may give guiding directions as to whether a foreigner is exempt from the demand to hold a residence permit. The Immigration Service may, in this connection, request the following information:

- documentation for registration of the undertaking in the sending country
- documentation for activities in the undertaking
- documentation for the services provided in Denmark (i.e. a copy of the contract concerning provision of services)

- documentation showing that the posted worker has been permanently employed in the undertaking providing the services. It must be a matter of a genuine employment relationship. This can be documented e.g. in the form of a copy of the employment contract translated into Danish or English or copies of pay slips.

Reference is also made to fact box 3.

The time it takes for the Danish Immigration Service to consider a case where it is asked to give guiding directions will depend on how well the case is examined when the Immigration Service receives it.

In the case of suspicion of circumvention of the rules, the case may be reported to the police as a possible infringement of the rules laid down in the Aliens Act on legal work. The police will then assess whether there is a basis for instituting judicial proceedings, cf. section 742 of the Administration of Justice Act.

4

WRITTEN PARTICULARS OF EMPLOYMENT

In connection with employment relationships of more than one month's duration employers in all EU Member States are required to draw up written particulars of employment containing information on all essential employment conditions such as wage, workplace, working time, dismissal, holiday, pension, duration, etc. If the employer intends to post the worker to perform work in another country for more than one month, the worker must before the departure be in possession of an employment contract or written particulars of employment which must, as a minimum, contain the following additional information: (a) the duration of the work to be performed abroad, (b) the currency in which the wage is paid, (c) the benefits in cash and in kind in connection with the stay abroad, (d) the terms in connection with the worker's return to the home country, and (e) a statement as to whether the required forms and documents in connection with the posting have been issued.

There are no rules as to the language in which the particulars of employment are to be drawn up; this also applies in connection with posting of workers.



In connection with this assessment, the police may through the Customs and Tax Administration (ToldSkat) collect information about the posting undertaking. The police may also request to see employment contracts, forms E 101 and contracts between the posting undertaking and the Danish party for whom the services are intended.

In the case of doubt as to whether the undertaking complies with the Act on Posting of Workers, contact may be taken to the authority responsible for those parts of the Act which the undertaking is possibly violating. If it is, for instance, a case of safety and health problems, the authority to be contacted is the National Working Environment Authority.

EXAMPLE

A Danish undertaking concludes an agreement with an Hungarian undertaking concerning services under a sub-contract. The Hungarian undertaking sends two Hungarian workers to Denmark for four weeks to provide the services. The Hungarian workers are not required to hold a residence permit while performing the work in Denmark. The posting is covered by the Danish Act on Posting of Workers. It is up to the relevant Danish trade union to check whether the wage is reasonable compared with Danish employees who are performing similar work. The trade union will typically try to conclude an agreement with the foreign employer; in some cases by taking industrial action. (Reference is made to fact box 5).

A Danish contractor wins a major building project and uses a plumbing and heating firm from Latvia as a sub-contractor. The Latvian firm posts Latvian workers to perform the plumbing and heating work and pays the wages to the Latvian workers. The Latvian workers are not required to hold a residence permit according to the rules in the transitional scheme. As the posting has a duration exceeding three months, the workers are required to have a residence certificate after having stayed in Denmark for three months. The posting is covered by the Danish Act on Posting of Workers. See also fact box 5 about the role of the trade unions.

5

WAGE CONDITIONS AND DANISH TRADE UNIONS

The Act on Posting of Workers does not lay down rules as to the wages that a foreign employer must pay his employees when they are posted to Denmark. Nor is there any requirement in the Act that the employer should be covered by a collective agreement. The background for this is that Denmark has no general legislation concerning minimum wage or regulation of the wage to be paid for specific job functions. Wages are determined through collective bargaining. In Denmark, pay and working conditions are mainly regulated through collective agreements between employers and trade unions. It is a fundamental principle of the Danish labour market system that the trade unions may take industrial action in the form of a strike, boycott or sympathy strike in order to press through a demand for conclusion of a collective agreement. This applies in relation to both Danish and foreign employers on the Danish labour market. Cases concerning whether a strike or other industrial action is lawful may be brought before the Industrial Court through a special fast procedure.



INVESTIGATION IN THE CASE OF REPORTS CONCERNING ILLEGAL WORKERS: POSTED WORKERS

- Requirements to the undertaking**
- The undertaking must be VAT registered with the Customs and Tax Administration (ToldSkat) – Sønderborg before it starts its activities in Denmark.
 - The undertaking must pay VAT in Denmark.
 - Temporary employment agencies, however, are not required to VAT register with the Customs and Tax Administration, nor are they required to pay Vat in Denmark.
- Requirements to the foreigner**
- The worker must be permanently employed with the posting undertaking.
 - The worker must normally carry out his/her work in another EU Member State than Denmark.
 - The work for which the worker is posted to Denmark must be clearly defined and temporary.
 - The worker must have a residence permit according to the rules in the transitional scheme, if he or she is employed with a temporary employment agency.
- Investigation themes**
- Is the undertaking registered in the home country?
 - Is the undertaking registered with the Customs and Tax Administration – Sønderborg?
 - Is there a contract for the provision of services?
 - Is it a matter of activities through a temporary employment agency?
 - Is it a matter of a de facto posting of workers or a business construction for the sole purpose of circumventing the provisions laid down in the transitional scheme concerning residence permit?
 - Is the posted worker performing the work functions that have been agreed between the posting undertaking and the party for whom the services are intended?
 - Is the undertaking paying VAT in Denmark?
 - In the case of a stay for more than three months: has the foreigner obtained a residence permit from the Danish Immigration Service?
 - In the case of a stay with a duration of more than one month: has the posted worker received written particulars of employment from the employer?
- Relevant documentation**
- Information concerning the registration of the undertaking abroad through the VIES system – through the Customs and Tax Administration – Sønderborg.
 - Information about registration of the undertaking with the Customs and Tax Administration – Sønderborg.
 - Information about current VAT payments of the undertaking.
 - Contract between the undertaking and the party for whom the services are intended and invoices with vouchers issued at the time of the control.
 - Written particulars of employment for the posted workers.
 - Forms E 101 for the posted workers.



SPECIFIC QUESTIONS THAT THE POLICE MAY ASK IN CONNECTION WITH THE INVESTIGATION OF A CASE CONCERNING POSTING OF WORKERS

- Who is your employer?
If the employer is not the foreign undertaking, but a Danish undertaking, it is not a matter of posting of a worker and the employee is therefore required to hold a residence permit issued by the Danish Immigration Service in accordance with the rules laid down in the transitional scheme.
- Who tells you how to perform the work?
It must be the posting undertaking that has the right to control and direct the work in relation to the worker concerned. If the Danish undertaking controls and directs the work and holds the economic risk connected to the work that is carried out, the case should, as the main rule, be considered under the rules applying to temporary employment agencies.
- How long have you been working here and when will the work be finished?
The police may ask to see written particulars of the employment relationship which must be drawn up after one month's employment, at the latest. The police may also request to see a form E 101 as documentation for the worker being covered by social security in the sending country during the employment relationship. If the work has lasted for more than three months, the worker concerned must hold a residence certificate issued by the Immigration Service.
- Who is paying your wage?
If the wage is paid by a Danish undertaking, it is not a matter of posting of workers.
- Where are you going to work when this work task has been completed?
If the person does not state that he/she is going back to the sending country/the home country, it may be a case of circumvention of the rules.
- Are you permanently employed in the posting undertaking?
Casual workers and temporary workers are required to hold a residence permit in accordance with the rules laid down in the transitional scheme.
- Do you pay Danish tax on your income?
In cases of temporary work, Danish tax should always be payed on the income earned in Denmark.

9:

RESIDENCE AS A SELF-EMPLOYED PERSON



Legal basis

Section 6 of the Aliens Act, cf. section 1 of the EU/EEA Order.
 Consolidation Act No. 703 of 8 August 2003 (the VAT Act) section 47.
 Order No. 414 of 3 June 2004 of the Ministry of Economic and Business Affairs.
 Order No. 508 of 10 June 2004 of the Ministry of Taxation.
 Circular No. 129 of 4 July 1994 concerning the Act on personal taxes, par. 3.1-3.1.1.5.

Conditions and rights

The EU rules on freedom of establishment give citizens from the eight new East European EU Member States a right to set up a business in Denmark and a right to stay in Denmark for this purpose.

There are no transitional rules in relation to the EU rules on freedom of establishment. Here the same rules apply as to all other EU citizens.

Registration of the undertaking

An undertaking that sets up a business in Denmark must register with the Danish Commerce and Companies Agency at the latest eight days before the start of the activities liable to tax or other duties.

The Danish Commerce and Companies Agency sends applications for registration of one-man firms from the eight new East European EU Member States to the Customs and Tax Administration (ToldSkat) in order to clarify whether it is also de facto a matter of self-employment.

In the case of doubt on the part of the Customs and Tax Administration as to whether it is a matter of a self-employed activity or an employment relationship, the Customs and Tax Administration will contact the undertaking and carry out a concrete evaluation of the work that is being performed.

EU/EEA residence certificate to the person who is running the business

A citizen from one of the eight new East European EU Member State who sets up a business in Denmark and who wishes to stay here for more than three months must file an application with the state county authorities for an EU/EEA residence certificate.

In connection with the application for a residence certificate documentation must be submitted for the person's activities in Denmark. This could, for instance, be a copy of the registration form from the Danish Commerce and Companies Agency, a budget for the first working year drawn up by a registered accountant or a chartered accountant or a lease or other evidence of the location of the establishment of the undertaking.

The state county authorities will then decide whether it is a matter of a self-employed activity or an employment relationship.

If the state county authorities find that it is not a matter of a self-employed activity, but an employment relationship, the person concerned must apply to the Danish Immigration Service for a residence permit in accordance with the rules laid down in the transitional scheme. An appeal may be brought against the decision of the state county authorities to the Danish Immigration Service.

If a foreigner who is – de facto – an employee brings an appeal against a decision of the state county authorities before the Danish Immigration Service, the bringing of such an appeal will not give the foreigner a right to work in Denmark.



CRITERIA THAT FORM PART OF THE ASSESSMENT BY THE CUSTOMS AND TAX ADMINISTRATION (TOLDSKAT) AS TO WHETHER IT IS A MATTER OF A SELF-EMPLOYED ACTIVITY OR AN EMPLOYEE RELATIONSHIP

Matters that speak in favour of it being a matter of a self-employed activity:

- The person in question is organising, managing, distributing and is personally inspecting the work.
- The person has income from more than one customer.
- The person concerned is working for more customers at the same time.
- The money is not paid until the work is completed.
- The person may himself/herself recruit staff.
- The person concerned is personally liable for the work performed and is assuming a personal financial risk.
- The person concerned only has an income in the case of a surplus from the business activities.
- The person concerned is working from his/her own premises and is personally paying the costs in this connection.
- The person concerned owns the tools, machinery, etc. used in connection with the work and supplies materials for the work.
- It is advertised in advertisements, telephone directories, etc. that the person concerned is a professional assuming specific work tasks.
- The person concerned is responsible for any accidents at the workplace.
- The person concerned determines his/her own working time.
- The person concerned is registered for payment of VAT or special duties based on their wage bill.
- The person concerned has a special authorisation, license or permission to carry out the work performed.
- The customer's obligations towards the firm are restricted to the specific individual contract.

Matters that speak in the favour of it being an employee relationship:

- Rules are laid down for the performance of the work and the work may even be controlled and inspected.
- The work is only performed for a single customer.
- The working time is determined by others.
- The person concerned has a (maybe temporary) contract concerning ongoing work.
- The person concerned has income from only a single customer.
- The person concerned has a right to be dismissed with a certain notice of dismissal.
- The person concerned is paid a fixed sum for each hour, week or month of work.
- The income is mainly net income, i.e. there are no costs for the purchases of, for instance, materials.
- Others defray the costs in connection with the work.



Is an alleged self-employed person de facto an employee

If a person from one of the eight new East European EU Member States is de facto an employee, he/she has no right to work in Denmark without holding a residence permit according to the rules laid down in the transitional scheme. This applies from the first day of work in Denmark notwithstanding the fact that self-employed persons are not required to apply to the state county authorities for a residence certificate until after having stayed in Denmark for more than three months.

Follow-up

In cases where an EU/EEA residence certificate has been issued on the basis of self-employment, the state county authorities may ensure that business activities are actually taking place by requesting documentation for VAT registration and annual accounts. The state county authorities may also request to see quarterly accounts and documentation for VAT payments.

In special cases, the state county authorities may request the police to examine whether the person is actually carrying out activities as a self-employed person.

Doubts as to whether it is de facto a matter of a self-employed person

It is a circumvention of the rules if a citizen from one of the eight new East European EU Member States who is de facto an employee pretends to be a self-employed person for the sole purpose of unlawfully circumventing the rules on residence permit laid down in the transitional scheme.

If it is suspected that a citizen from one of the eight new East European EU Member States who has established himself/herself as self-employed is de facto working as an employee, the case may be reported to the police as a possible violation of the requirements as regards legal work laid down in the Aliens Act. The police will then assess whether there is a basis for investigating the case, cf. section 742 of the Administration of Justice Act.

In such cases, the police may obtain information from the state county authorities and the Customs and Tax Administration to be used in the further investigations. The police may, for instance, obtain information as to whether the undertaking is VAT registered and, if so, the facts on which the VAT registration of the undertaking has taken place.

Information about the VAT registration of an undertaking in Denmark can be found at the website www.toldskat.dk – **virksomheder – tast selv** if one knows the VAT-number (CVR/SE number) or the name and/or address of the firm.



THE BASIS FOR THE ASSESSMENT BY THE STATE COUNTY AUTHORITIES

The assessment by the state county authorities as to whether a citizen from one of the eight new East European EU Member States is operating as a self-employed person or is working as an employee in an employment relationship will be based on the following factors:

- The employee relationship is characterised by the employer having the power to instruct and control the work of the employee; however, this does not exclude a certain degree of independent organisation of the work.
- In an employment relationship the work is performed by a person in the service of another person against remuneration, whereas operation as a self-employed person takes place at the person's own risk and account. It is thus extremely important in this connection to look upon who is paying the costs directly connected with the performance of the work.
- If the remuneration is used to pay major business costs that are atypical for an employment relationship such as, for instance, renting of business premises and the cost of acquisition of major operational goods, the starting point will be that it is a matter of a self-employed activity.
- It is not a matter of a self-employed activity solely because the person is paying the costs of, for instance, meals, accommodation and transport. In addition, it is a presumption that the self-employed activity is exercised over a longer consecutive period of time.



INVESTIGATION IN CONNECTION WITH REPORTS ABOUT ILLEGAL WORK: SELF-EMPLOYED PERSONS

- Requirements to the undertaking**
- It must be a matter of a genuine self-employed activity.
 - The undertaking must be VAT registered with the Customs and Tax Administration – Sønderborg before the start of economic activities in Denmark.
 - The undertaking must pay VAT in Denmark.
- Requirements to the foreigner**
- It must not be a matter of an employment relationship.
 - If the stay in Denmark exceeds three months, the foreigner is required to apply to the state county authorities for an EU/EEA residence certificate.
- Investigation themes**
- Is the undertaking registered with the Customs and Tax Administration – Sønderborg?
 - Is the undertaking registered with the Danish Commerce and Companies Agency?
 - Does the Customs and Tax Administration find that it is a matter of a self-employed activity?
 - Does the undertaking pay VAT in Denmark?
 - Is there a contract for provision of services?
 - Is the concrete work performed in accordance with the basis on which the company was registered with the Customs and Tax Administration?
 - In the case of a stay for more than three months: does the foreigner hold an EU/EEA residence certificate?
 - Do the state county authorities find that it is a matter of self-employment?
- Relevant documentation**
- Information on the registration of the undertaking with the Customs and Tax Administration – Sønderborg.
 - Information about current VAT payments from the undertaking.
 - Information about the budget, leases, etc. of the undertaking.
 - Contract between the undertaking and the party for whom the services are intended.

10:

RESIDENCE AS A PROVIDER OF SERVICES



Legal basis

Section 6 of the Aliens Act, cf. section 1 of the EU/EEA Order.
Consolidation Act No. 703 of 8 August 2003 (the VAT Act) sections 15, 17, 18, 46, 47, 48 and 65.

Conditions and rights

The EU rules on the freedom to provide and receive services give self-employed persons from other EU Member States a right to provide services to Denmark and a right to stay in this country for this purpose.

There are no transitional rules in relation to the EU rules on the freedom to provide services. Here the same rules apply as to all other EU citizens.

Registration of the undertaking

An undertaking that is not established or represented in Denmark, but wishes to provide services which are liable to VAT must register with the Customs and Tax Administration (ToldSkat) – Sønderborg not later than eight days before the delivery of the service. The undertaking must – unlike Danish undertakings – be registered and pay VAT even if the total services liable to VAT do not exceed DKK 50,000 within a period of 12 months.

In connection with the VAT registration Customs and Tax Administration may on the basis of an assessment of the individual case request the undertaking to provide the following information:

- Expected turnover in Denmark.
- Copies of contracts concluded concerning work and tenders for work in Denmark.
- Number of employees.
- The nature of the work and the party for whom the work is carried out in Denmark.
- Copy of VAT registration certificate from the home country.

This information is to be used in connection with an evaluation of whether it is a matter of a self-employed activity or an employment relationship.

The Customs and Tax Administration may check basic data about the registration in another country through the VIES-system (VAT Information Exchange System) containing information about all VAT-registered undertakings in the EU. The register includes information about VAT number, address and date of registration of undertakings in the individual EU Member States.

Registration of the E 101 forms of foreigners providing services in Denmark

In the future Denmark will receive a copy each time another EU Member State issues a form E 101 to self-employed persons who carry out work in Denmark in connection with his or her undertaking temporarily providing services in Denmark. This registration is expected to take effect in the autumn of 2005. The form contains data about the self-employed person and about his or her undertaking. Such information may form part of an assessment as to whether self-employed persons in concrete cases are staying and providing services in Denmark accordance to with the rules. (Reference is also made to section 8, fact box 2).



Residence certificate to the provider of services

A citizen who is operating as a self-employed person in one of the eight new East European EU Member States and who wishes to stay in Denmark for more than three months for the purpose of providing services must apply to the state county authorities for an EU-EEA certificate.

The person must document that he/she will provide services to Denmark for instance in the form of contracts concluded and the budgets of the undertaking.

The state county authorities will on this basis decide whether it is a matter of provision of services or an employment relationship.

If the state county authorities find that it is not a matter of provision of services, but an employment relationship, the foreigner must apply to the Danish Immigration Service for a residence permit in accordance with the rules laid down in the transitional scheme. An appeal against the decision of the state county authorities may be brought before the Immigration Service.

If a foreigner who is de facto an employee files an appeal against the decision of the state county authorities, this will not give the foreigner a right to work in Denmark.

Is the provider of services de facto an employee?

If a foreigner from one of the new East European EU Member States is de facto an employee, he/she does not have a right to work in Denmark without first having obtained a residence permit in accordance with the rules laid down in the transitional scheme. This applies from the first day of work in Denmark irrespective of the fact that the provider of services is not required to apply to the state county authorities for a residence permit until after having stayed in Denmark for more than three months.

Doubt as to whether it is a matter of provision of services

It is a circumvention of the rules if a citizen from one of the new East European EU Member States who is de facto an employee pretends to be a provider of services for the sole purpose of circumventing the rules concerning residence permit laid down in the transitional scheme.

The distinction between employees and self-employed persons is dealt with in section 9.

If it is suspected that a citizen from one of the eight new East European EU Member States is not a provider of services, but is de facto working as an employee, the case may be reported to the police as a possible violation of the rules laid down in the Aliens Act concerning the requirements to legal work. The police assesses whether there is a basis for instituting a criminal investigation of the case, cf. section 742 of the Administration of Justice Act.

The police may obtain information from the state county authorities and the Customs and Tax Administration (ToldSkat) to be used for the investigation. The police may, inter alia, obtain information about the conditions which form the basis for registration of the undertaking. Through the VIES system (Vat Information Exchange System) the Customs and Tax Administration has access to data about all VAT-registered undertakings in the EU. This register contains data on VAT number, address and date of registration in all EU Member States.

It is possible to control the validity of a foreign VAT registration number at the website http://europa.eu.int/comm/taxation_customs/vies/da/vieshome.htm.



INVESTIGATION IN THE CASE OF REPORTS OF ILLEGAL WORK: PROVIDERS OF SERVICES

- Requirements to the undertaking**
- The undertaking must be registered with the tax authorities in the home country.
 - The undertaking must register with the Customs and Tax Administration – Sønderborg before the start of the economic activities in Denmark.
 - It must be a matter of de facto self-employed activities.
- Requirements to the foreigner**
- It must not be a matter of an employee relationship.
 - If the stay in Denmark exceeds three months, the foreigner must apply to the state county authorities for an EU/EEA residence certificate.
- Investigation themes**
- Is the undertaking registered in the home country?
 - Is the undertaking registered with the Customs and Tax Administration – Sønderborg?
 - Does the Customs and Tax Administration find that it is a matter of de facto provision of services?
 - Is VAT paid in Denmark?
 - Is there a contract for provision of services?
 - Is the concrete work performed in accordance with the basis on which the undertaking was registered with the Customs and Tax Administration?
 - If the stay exceeds three months: does the foreigner hold an EU/EEA residence certificate?
 - Do the state county authorities find that it is a matter of a self-employed activity?
- Relevant documentation**
- Information on the registration abroad of the undertaking from the VIES system – through the Customs and Tax Administration.
 - Information about the registration of the undertaking with the Customs and Tax Administration – Sønderborg.
 - Information about current VAT payments from the undertaking.
 - Information about the budget, leases, etc. of the undertaking.
 - Contract between the undertaking and the party for whom the services are intended.

11:

RESIDENCE AS A FAMILY MEMBER



Legal basis

Section 6 of the Aliens Act, cf. sections 5-8 of the EU/EEA Order.

Conditions and rights

Family members of an EU/EEA citizen who is staying legally in Denmark, including citizens from the new East European EU Member States, has a right to take up residence with the EU/EEA citizen if a number of specific conditions are satisfied.

The state county authorities will issue a residence certificate to family members of self-supporting persons, self-employed persons, providers of services and students. The residence certificate will expire at the same time as the main person's residence permit/residence certificate.

Family members of employees must apply to the Immigration Service for a residence permit.

As regards migrant workers, it is a condition for the family's access to take up residence in Denmark that the employee disposes of a home that meets the requirements that are considered normal in the area where the person concerned is employed. In relation to some family members it is furthermore required that the employee can support them.

Access to the labour market

Family members of EU/EEA citizens who are staying in Denmark are not required to have a special work permit. This also applies to family members of citizens from the new East European EU Member States holding a residence permit in Denmark.

12:

SUSPICION OF ILLEGAL WORK



Suspicion of illegal work

In the case of concrete suspicion that a citizen from one of the eight new East European EU Member States is working in violation of the rules laid down in the Aliens Act concerning requirements to legal work on the Danish labour market, the case may be reported to the police in the police district where the work is taking place, cf. section 742 (1) of the Administration of Justice Act.

The police will then assess whether there is a basis for investigating the case, cf. section 742 (2) of the Administration of Justice Act.

If there is a basis for investigating the case, the police may seek information to illuminate the basis for the foreigner's residence and work in Denmark. The police may also obtain information about the undertaking(s) of relevance in relation to the work concerned.

The investigation by the police – including which authorities will be involved – will depend upon the indicated basis for the stay in Denmark. The relevant themes and possibilities of investigation in connection with posting of workers, self-employed persons and providers of services, respectively, are thus described in greater detail in the previous sections 8, 9 and 10.

The possibilities of police investigation

Police investigations of criminal cases are governed by the Administration of Justice Act. Outside the Administration of Justice Act rules exist in the field of taxation enabling (other) public authorities to impose sanctions as part of the general control of the authorities on whether legislation is observed. This may, i.e. be in the form of control visits of an undertaking or in the form of an order to disclose more detailed information.

The public administration's use of such coercive measures and duties to disclose is governed by the Act on Legal Protection and Administration in Social Matters. Under this Act, these sanctions – e.g. a statutory duty to disclose information to an authority – may not be applied if a citizen or an undertaking is under suspicion of having committed a

criminal offence. In such cases the matter must be handed over to the police and subsequently proceed in accordance with the rules laid down in the Administration of Justice Act.

Under the Administration of Justice Act the police may use a number of so-called criminal procedure measures during a criminal investigation. However, not all of these measures may be used in investigations of illegal work. In this area the most relevant measures will be:

- Search
- Sequestration
- Disclosure and inspection of documents
- Arrest

It is a fundamental condition for the use of these sanctions that there is reasonable grounds for suspecting that a criminal offence has been committed. Furthermore, it is a condition that the measure is proportional. This means that the measure must not be disproportionate to the significance of the case and to the circumstances in general. In order for the police to use any measures of criminal procedure these must be approved by the courts.

Under section 794 of the Administration of Justice Act, the police may perform a search. According to this provision the police may search (examine) rooms and other localities as well as objects in the possession of a suspect. A search can only be conducted if it is of significant importance to the investigation.

Under section 802 of the Administration of Justice Act objects in the possession of a suspect may be sequestered. In case of sequestration, the objects are temporarily preserved by the police. Sequestration takes place when there is a reason to assume that the objects may for instance serve as proof or should be confiscated in connection with a later criminal case.

Moreover, under section 804 of the Administration of Justice Act a non-suspect may be ordered to disclose objects, e.g. documents, to the police (disclosure and inspection of documents).



Thus, if there is reasonable grounds to suspect a foreigner of working illegally in Denmark – and thus to suspect an employer of employing the person concerned without the necessary work permit – the police will under the mentioned provisions, and as part of the investigation, be able to perform a search of the workplace and, in connection to this, sequester any documents that may disclose the character of the working conditions in more detail. Furthermore, there is a possibility of ordering other persons to disclose documents in order to examine the case. Sequestration or orders of disclosure and inspection of documents will most likely not be in contravention of the principle of proportionality.

Under section 755 (1) of the Administration of Justice Act the police may arrest a person if the arrest is assumed to be required in order to prevent further criminal offences, to ensure the provisional presence of the person concerned or to prevent the person concerned from communicating with others.

Thus, it is possible to arrest foreigners working illegally in Denmark. However, if a foreigner works illegally in Denmark for only a short period of time, and thus is only subject to a minor fine, there will hardly – considering the principle of proportionality – be grounds for arresting this person.

If a foreigner is facing deportation in addition to a fine, he or she may be arrested with a view to ensure the presence of this person. Generally, however, EU citizens cannot be deported merely because they have worked illegally, and thus they cannot be arrested on the basis hereof.

Furthermore, under the Administration of Justice Act the police may keep individuals under observation during the investigation and they are also allowed to perform bodily searches on suspects and others. These provisions may to a certain extent and when necessary be used in cases of illegal work.

Some of the measures of criminal procedure laid down in the Administration of Justice Act are reserved for the most serious offences, and may thus not be applied during the

investigation of cases of illegal work. This applies to e.g. wire-tapping and data-reading. These measures may only be applied in cases with a statutory range of 6 years of imprisonment or more, whereas the penalty for the offences involving illegal work is no more than 1 year of imprisonment for the foreigner and 2 years of imprisonment for the employer.

In some more serious cases the Administration of Justice Act provides that a suspect may be detained (section 762 of the Administration of Justice Act). The person in question can only be detained if he or she is expected to be sentenced to 30 days of imprisonment or more. As the paramount rule, the penalty in cases of illegal work is a non-custodial sentence and therefore pre-trial detention is usually not a possibility in these cases. Only in very few cases, where the offence is so gross that a custodial sentence may be imposed for 30 days or more, there will be a basis for taking the person in question into custody.

Sanctions

If the police investigation shows that the requirements laid down in the Aliens Act concerning legal work have been violated, both the employer and the employee may be punished for illegal work, cf. section 59 of the Aliens Act.

In regard to the employer who illegally employs foreigners, the penalty range is a fine or imprisonment for up to 2 years. The level of fines in cases without a custodial sentence is DKK 10,000 per employed foreigner per initiated month. In cases with aggravating circumstances, the aim is to tighten the level of fines to DKK 20,000 per employed foreigner per initiated month. In cases where there are multiple aggravating circumstances the indicative size of the fine of DKK 20,000 may be dispensed with in a stringent way.

As for foreigners who are illegally employed in Denmark, the penalty is a fine or imprisonment for up to 1 year. In cases without a custodial sentence, the level of fines is DKK 1,000 for the first month of illegal employment, and hereafter increasing with DKK 500 per month.

13:

CONDITIONS FOR RESIDENCE IN DENMARK FOR CITIZENS FROM THE EIGHT NEW EAST EUROPEAN EU MEMBER STATES

RESIDENCE AS	RIGHTS	CONDITIONS	REGISTRATION/DOCUMENTATION	RIGHT TO TAKE UP PAID EMPLOYMENT WITH AN EMPLOYER IN DENMARK
A tourist	The same rights as other EU citizens. A right to stay for three months without special permission.	Must be self-supporting. Stays exceeding three months require special permission.	Identity card/passport.	No
A self-supporting person	An EU/EEA residence certificate for up to five years may be issued.	Must be self-supporting.	EU/EEA residence certificate issued by the state county authorities.	No
A student	A right to stay in Denmark for students enrolled at formally qualifying vocational training courses, basic education, vocational education, youth education or folk high school courses.	Must be self-supporting. The state county authorities may request that the person concerned takes out a health insurance policy that will cover until he/she becomes entitled to public health insurance.	The state county authorities will issue a residence permit to EU/EEA citizens who are enrolled for a formally qualifying education. The Danish Immigration Service will grant a residence permit to EU/EEA citizens enrolled for participation in basic education, youth education or a course at a folk high school.	Will require a special work permit issued by the Danish Immigration Service.
A jobseeker	A right to stay in Denmark for six months.	Must be able to support himself/herself.	Identity card/passport.	No.
An intern	A right to stay in Denmark as an intern for up to 18 months in connection with a formal and recognised educational programme.	The stay as an intern must serve an educational purpose connected with the intern's education in the home country and the place of the internship must be fit for this purpose. Wage and working conditions must correspond to the usual terms for interns in the sector concerned. The intern must have reached 18 years of age and not yet be 35 years.	Residence permit issued by the Danish Immigration Service for the purpose of the internship in Denmark.	The intern is not allowed to take up other employment than the work that is an integral part of the approved internship.
An employee or temporary worker	A right to take up paid employment as stated in the residence permit.	A residence permit must be obtained from the Danish Immigration Service before the start of the work. The permit will be granted for a specific job if it is a full-time job at normal pay and working conditions. The undertaking must be registered with the tax authorities and must not be affected by a lawful industrial dispute. The residence permit is granted for the specific job and will be revoked if the person loses the job.	Residence permit issued by the Danish Immigration Service. Tax card.	Yes - subject to the conditions on which the residence permit is based.
A posted worker	The same rights as other EU citizens: A right to be posted for the purpose of providing services if the conditions for posting of workers are satisfied.	Must be permanently employed in the posting undertaking which must be based in another EU Member State. The worker should normally work in another EU country than Denmark, and the assignment for the purpose of which the worker is posted should be temporary and clearly specified. A document describing the agreement between the provider of the service and the customer in Denmark should be in place.	The posting undertaking must be registered with the VAT authorities in the home country. The undertaking must be registered with the Customs and Tax Administration (ToldSkat) – Sønderborg eight days before starting its activities in Denmark. The posted worker must be able to provide documentation of his/her employment in the posting undertaking. If the posting of the worker exceeds three months, the worker must obtain a residence permit from the Danish Immigration Service.	No
A self-employed person	The same rights as other EU citizens: The right to set up a business in Denmark and a right to stay in Denmark for this purpose.	There must be a contract concerning the provision of the services for which the worker is posted. The work for which the worker is posted must be specifically defined and temporary.	The undertaking must be registered with the Customs and Tax Administration eight days before starting its activities. The person must obtain an EU/EEA residence certificate from the state county authorities if the stay exceeds three months.	No
A provider of services	The same rights as other EU citizens: The right to provide services to Denmark and a right to stay in Denmark for this purpose.	It must be a matter of a self-employed activity. It must not be an employment relationship.	The undertaking must be registered with the VAT authorities in the home country if the undertaking is liable to payment of VAT in the home country. The undertaking must be registered with the Customs and Tax Administration – Sønderborg eight days before the provision of services in Denmark. The person must obtain an EU/EEA residence certificate from the state county authorities if the stay exceeds three months.	No
A family member.	The same rights as other EU-citizens.	In connection with family members of employees, the employee is required to have a dwelling that meets the requirements that are considered normal for national employees. In relation to some family members, it is furthermore required that the employee can support them.	Family members of employees must apply to the Danish Immigration Service for a residence permit. The state county authorities will issue an EU/EEA residence certificate to family members of self-supporting persons, self-employed persons, providers of services and students.	Yes



**RULES CONCERNING RESIDENCE AND WORK IN DENMARK
FOR CITIZENS FROM THE NEW EAST EUROPEAN EU MEMBER STATES**

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USEFUL CONTACTS

THE POLICE

The Danish National Police, the Aliens Department
Tel. no. +45 33 14 88 88, e-mail rpche@politi.dk
Police districts: Addresses, telephone numbers, e-mail addresses etc. can be found at the website www.politi.dk

- Coordinates the activities of the police against illegal work.
- Receives reports concerning concrete suspicions of illegal work.

THE IMMIGRATION SERVICE

Tel. no. +45 70 26 01 86, e-mail: udlst@udlst.dk
Website: www.udlst.dk

- Issues residence permits to workers and trainees from the eight new East European EU Member States.
- Assists in connection with clarification of questions concerning the basis for a person's residence and work in Denmark.
- Appeal instance in certain cases concerning residence and work permit where the decision has been taken by the state county authorities in the first instance.

THE STATE COUNTY AUTHORITIES

The addresses etc. of the state county authorities can be found at the website www.statsamt.dk

- Issue residence permits to self-supporting persons, students, self-employed persons and providers of services.
- Assist the police and other authorities in connection with information about concrete decisions taken by the state county authorities.

THE CUSTOMS AND TAX ADMINISTRATION (TOLDSKAT)

The Regional Customs and Tax Administration, Southern Jutland – Sønderborg
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Southern Jutland	+45 72 37 50 00

www.toldskat.dk - virksomheder - tastselv

http://europa.eu.int/comm/taxation_custom/vies/da/vieshome.htm

- Registration of foreign undertakings, including self-employed persons and providers of services.
- All regional tax authorities may assist the police and other authorities with information as to whether an undertaking is registered in Denmark and refer to the Customs and Tax Administration (ToldSkat) district that may provide more detailed information about the individual undertaking.
- District Western Jutland administers the taxation of temporary workers.
- Website with information about undertakings registered in Denmark.
- Website where the VAT number of undertakings in the individual EU Member States can be checked.

THE MINISTRY OF EMPLOYMENT

the Division for East European Affairs
Tel. no. +45 33 92 59 00, e-mail: bm@bm.dk

- General questions in relation to the enlargement of the European Union and free movement of workers.