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FINAL REPORT BY THE EXPERT

Advice case title: Amendment to the Danish Social Pension Act

Full official name of the advised entity: Region Sønderjylland-Schleswig,
Regionskontor & Infocenter

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1 Executive summary

The Danish pension system calculates pension amounts based on periods of residence or employment in Denmark. On April 26, 2018, the Danish Parliament adopted amendments to the Danish Pensions Act, effective 1 July 2025. These amendments change the calculation period for a full state pension from 40 years to 9/10 of the time between the ages of 15 and retirement.

The report identifies three main barriers: 1) the cut-off date of July 1, 2025, 2) different evaluations of the same periods, and 3) indirect discrimination due to nationality. These barriers create disparities in pension entitlements, particularly affecting cross-border workers and those retiring just before and after the cut-off date. The amendment results in a lower pension assessment for the same periods of residence or employment, contrary to the protection of legitimate expectations.

A roadmap to short-term solutions entails either implementing a grandfather clause to retain entitlements under the old rules or introducing a phased implementation for a gradual transition. For the long-term solution, an application of the aggregation principle from Regulation (EC) No 883/2004 on EU citizens might be a solution. Another solution could be a consideration of repealing the 2018 amendments to restore the previous pension rules.

2 Description of the obstacle with indication of the legal/administrative provisions causing the obstacle, including an explanation of the obstacle's origin, nature and impact and an illustration of a situation in which the obstacle arises

The current border obstacle was reported by Region Sønderjylland-Schleswig,

Regionskontor & Infocenter which is an office of the Region Sønderjylland-Schleswig.

The main tasks of the Regionskontor & Infocenter are to provide guidance and consulting to cross-border workers, businesses in the provision of services, and all people who make use of their right to free mobility.

2.1 Demographics in the Region Sønderjylland-Schleswig

Region Sønderjylland-Schleswig is in the northernmost part of Germany and the southernmost part of Jutland (Denmark), with a total area of 7.748,91 km² and a population of about 693.625 (September 2024)¹, of which 469.059 live in Germany and about 224.566 in Denmark.

The region consists of seven municipalities: Tønder, Aabenraa, Sønderborg, and Haderslev on the Danish side of the border and Kreis Schleswig-Flensburg, Kreis Nordfriesland and Stadt Flensburg on the German side of the border.

In 2023, there were a total of 12.834 cross-border workers. Of these, 12.237 commuted from Germany to Denmark and 597 from Denmark to Germany.²

The Regionskontor & Infocenter is located in the city of Bov.

2.2 Description of the obstacle with indication of the legal/administrative provisions causing the obstacle

The obstacles reported concern cross-border workers commuting from Germany to Denmark.

Both Germany and Denmark have well-established pension systems.

The Danish pension system is a multi-pillar structure consisting of a universal state pension (folkepension), occupational pensions (arbejdsmarkedspension), and voluntary private personal pension plans (privat individual opsparing).

The state pension, funded by general tax income revenues, provides a basic income to all residents when they reach retirement age. Occupational pensions are negotiated between employers and employees, while private personal pensions are tax-subsidized savings plans.

This report focuses on Danish state pensions (folkepension) and an amendment to the Danish Social Pensions Act in 2018.

2.3 Description of the obstacle

¹ https://region.de/region/dk/ueber_uns/region/DatenundFaktenRegionSjSl_dk.php

² https://www.region.de/region/de/presse/aktuelles-view.php?we_objectID=4214

Denmark has a statutory old age pension regulated in the Danish Social Pensions Act.³ It will henceforth be referred to as »state pension«.

On April 26, 2018, the Danish Parliament adopted amendments to the Danish Pensions Act.⁴ These amendments are effective from 1 July 2025.

The relevant amendment for this report was a change in § 5 in the Danish Pensions Act about the calculation of full state pension.

For those retiring before July 1, 2025, the calculation of a full Danish state pension is based on a period of 40 years, which can be accumulated between the ages of 15 and 67 or 68⁵. This means that pensions are calculated at 1/40 for each year of residence or employment. The period for qualifying for a pension is 52 or 53 years depending on retirement age 67 or 68 years.

For those retiring after July 1, 2025, § 5 states that the calculation of a full Danish state pension requires that a person has resided or worked in Denmark for 9/10 of the time between the ages of 15 and 67 or 68. Thus, under the new rule, the period for qualifying for a pension is 47 or 48 years.

Consequently, the legislative amendment changes the way Denmark calculates state pension based on the pro rata temporis principle⁶.

The reason behind the amendment is described in the comments to the law proposal⁷ and states that the stricter requirements align more closely with the rules on pension accrual and the longevity indexation of the state pension age. Without these adjustments, continuous increases in the state pension age could unintentionally relax the accrual requirements.

2.4 Analysis of the obstacle with indication of the legal/administrative provisions causing the obstacle

The description above identifies three barriers: 1) the cut-off date of 1 July 2025, 2) different evaluations of the same periods, and 3) indirect discrimination due to nationality.

³ LBK nr 1123 af 21/10/2024 Bekendtgørelse af lov om social pension

⁴ LOV nr 442 af 08/05/2018 Lov om ændring af lov om social pension, lov om Arbejdsmarkedets Tillægspension, pensionsbeskatningsloven og lov om retssikkerhed og administration på det sociale område (Skærpede krav til optjening af folkepension og førtidspension, hurtigere udbetaling af tillæg for opsat pension m.v.)

⁵ The state pension age in Denmark depends on the year of birth cf. LBK nr 1123 af 21/10/2024 Bekendtgørelse af lov om social pension § 1a.

⁶ In Denmark, this principle means that a person is entitled to a pension proportional to the period they have lived or worked in Denmark.

⁷ LFF 2018-02-07 nr 138 Forslag til lov om ændring af lov om social pension, lov om Arbejdsmarkedets Tillægspension, pensionsbeskatningsloven og lov om retssikkerhed og administration på det sociale område (Skærpede krav til optjening af folkepension og førtidspension, hurtigere udbetaling af tillæg for opsat pension m.v.)

These three barriers will be further analyzed in the following.

1) The cut-off date 1 July 2025:

The cut-off date of July 1, 2025, changes the pension calculation.

The time before July 1, 2018, will not be valued at 1/40 of the full pension per working year but will be recalculated according to the new, less favourable rule (9/10 of the time between the ages 15 and 67 or 68).

For example, a person born in 1963 who started working in Denmark on July 1, 2004, would have earned 14/40 of the Danish pension by July 1, 2018. However, as they retire after July 1, 2025, their entitlement for these years is reduced by law to 14/47. This results in an approximately 15% lower assessment for the period from 2004 to June 30, 2018, under the new rules.

This retroactive change adversely affects individuals who will no longer be able to adjust their plans, which is contrary to the protection of legitimate expectations.

2) Different evaluations of the same periods

The amendment in § 5 have introduced significant changes that affect the evaluation of pension entitlements. One notable issue is the disparity in assessments for cross-border workers retiring just before and after July 1, 2025, despite having identical periods of residence or employment. This change results in a reduction in the value of previous entitlements for those retiring after the specified date.

The following example may illustrate the problem:

Old Rules (Before July 1, 2025)

Person A retires on June 1, 2025.

Period of residence/employment: 30 years.

Pension calculation: Under the old rules, the pension is calculated based on a favorable formula.

Monthly pension amount: 20,000 DKK.

New Rules (From July 1, 2025)

Person B retires on July 1, 2025.

Period of residence/employment: 30 years (same as Person A).

Pension calculation: Under the new rules, the pension is calculated based on a less favorable formula.

Monthly pension amount: 18,000 DKK.

Despite having identical periods of residence or employment, Person A and Person B receive different pension amounts due to the change in rules. This results in a 2,000 DKK difference in their monthly pension, solely based on the timing of their retirement.

This example highlights the disparity created by the amendment, where individuals retiring just one month apart, but with the same work history, receive different pension amounts

The advised entity has provided a table that illustrates the differences:

Birth year	Pensionable age	Pension year	Pro-rata	Pension value	Loss
1946	65	2011	40	1,00	0
1947	65	2012	40	1,00	0
1948	65	2013	40	1,00	0
1949	65	2014	40	1,00	0
1950	65	2015	40	1,00	0
1951	65	2016	40	1,00	0
1952	65	2017	40	1,00	0
1953	65	2018	40	1,00	0
1954/1**	65+6	2019	40	1,00	0
1954/2	66	2020	40	1,00	0
1955/1	66+6	2021	40	1,00	0
1955/2	67	2022	40	1,00	0
1956	67	2023	40	1,00	0
1957	67	2024	40	1,00	0
1958/1	67	2025/1	40	1,00	0
1958/2	67	2025/2	46,8	0,85	0,15
1959	67	2026	46,8	0,85	0,15
1960	67	2027	46,8	0,85	0,15
1961	67	2028	46,8	0,85	0,15
1962	67	2029	46,8	0,85	0,15
1963	68	2031	47,7	0,84	0,16
1964	68	2032	47,7	0,84	0,16
1965	68	2033	47,7	0,84	0,16
1966	68	2034	47,7	0,84	0,16
1967	69	2036	48,6	0,82	0,18
1968	69	2037	48,6	0,82	0,18
1969	69	2038	48,6	0,82	0,18

All numbers have been rounded to the nearest whole number

Pro-rata is calculated $(\text{age} - 15) \times 0.9$
Pension value is calculated $40 / \text{pro-rata value}$
Loss is calculated $1 - \text{pension value}$

3) *Indirect discrimination due to nationality*

The amendment in § 5 has the potential to indirectly discriminate on the basis of nationality.

This is because the calculation period starts at the age of 15.

Under the old rules (40 years), people had to accumulate 40 years of residence in Denmark to qualify for a full pension. Since people could work until the age of 68, they had 53 years (from age 15 to 68) to accumulate these 40 years. This gave cross-border workers a lot of flexibility.

The new rules require 47 or 48 years of residence to qualify for a full pension. This means that people still count from the age of 15, but now they have to accumulate 47 or 48 years instead of 40.

Cross-border workers, who may not live in Denmark continuously, are more affected by this change. Under the old system, they had a longer period (52 or 53 years) to accumulate the required 40 years. Now they must accumulate 47 or 48 years in the same period, which is more difficult.

The 9/10-year residence requirement has the indirect effect of favoring Danish nationals and disadvantaging other nationals.

The primary EU regulation that addresses indirect discrimination in state pensions is Regulation (EC) No 883/2004 on the coordination of social security systems. This regulation ensures that EU nationals are treated equally and that periods of insurance, work, or residence in different member states are aggregated to determine eligibility for social security benefits, including pensions.

In essence, the new Danish rules make it more difficult for cross-border workers to qualify for a full Danish state pension because they have less flexibility in accumulating the required years of residence. This is seen as indirect discrimination because it disproportionately affects those who do not live in Denmark continuously.

Two European Court of Justice cases illustrate this issue:

Case C-55/00 (Gottardo) involved an Italian national who had worked in several EU countries and was denied a pension by the French authorities. The ECJ ruled that this constituted indirect discrimination based on nationality because it disproportionately affected non-French EU citizens.

Case C-443/93 (Vougioukas) concerned a Greek national who was denied a pension supplement by the German authorities. The ECJ found that this denial constituted

indirect discrimination on grounds of nationality.

Both cases illustrate how the ECJ ensures that national pension laws comply with EU principles of non-discrimination and equal treatment, in particular concerning nationality.

3. A roadmap toward possible short, medium, and long-term solutions

3.1 Short and medium-term solutions for barrier 1) The cut-off date 1 of July 2025, and barrier 2) Different evaluations of the same periods

3.1.1 One short and medium-term solution could be implementing a »Grandfather Clause«. Implementing a grandfather clause would allow individuals who have accumulated pension rights under the old rules to retain their entitlements. Consequently, those who had already earned pension rights before the new rules came into effect would not see a reduction in their entitlements.

In Denmark, the competent public authority to implement changes such as a grandfather clause or phased implementation for pension rules would typically be the Danish Parliament (Folketinget). Since pension regulations are part of national law, any significant changes, including the introduction of a grandfather clause or phased implementation, would generally require legislative action by the Parliament.

However, in some cases, specific details and administrative procedures related to the implementation of these changes could be handled by relevant ministries or agencies, such as the Ministry of Employment (Beskæftigelsesministeriet). This body might issue executive orders or guidelines to ensure the smooth application of the new rules, but the overarching legal framework would still need to be established by the Parliament.

3.1.2 Another solution could be a phased Implementation. Introducing a phased implementation of the new rules would allow a gradual transition period. This would give individuals nearing retirement age more time to adjust to the new requirements.

Given that old-age pensions are inherently long-term social benefits, a period from 2018 to 2025 may not provide sufficient time for necessary adaptations.

3.2 Long-term solutions for barrier 3) indirect discrimination due to nationality

3.2.1 Aggregation principle from the age of 15

Considering the age of 15 as the starting point for earning state pension rights, it is essential to view this age limit through the lens of the Equal Treatment Principle outlined in Regulation (EC) No 883/2004. This approach would involve applying the aggregation principle⁸ from the same regulation, thereby allowing periods of residence

⁸ Aggregation Principle: This principle allows for the combination of periods of insurance, work, or residence completed in different EU countries. This means that if an EU national has worked or resided in multiple

or employment from the age of 15 in other EU member states to count towards Danish pension eligibility. This means that if Danish nationals can start accumulating pension rights from the age of 15, EU nationals should also be able to do so under the same conditions.

In this way, EU citizens have the same opportunity to earn a pension as Danish citizens.

Previous ECJ cases, such as case C-85/96 (Martínez Sala) and case C-443/93 (Vougioukas), have established that indirect discrimination based on nationality is not permissible. These cases support the argument that EU nationals should not face additional barriers in accessing pension rights compared to Danish nationals.

Therefore, using the aggregation principle and the established case law on non-discrimination, EU nationals could argue for their eligibility to accumulate Danish pension rights from age 15, just like Danish nationals.

However, this proposal would significantly intrude upon the Danish state pension legislation, which is fundamentally based on a residence requirement. While the proposal aligns with EU law, its acceptance by the Danish state remains uncertain.

3.2.2 Repeal the amendment.

Denmark could plan a legislative proposal that aims to repeal the amendments to the Danish Pensions Act adopted on April 26, 2018, and restore the previous pension rules. The key provisions to be reinstated include the original calculation period and the requirements for earning a full pension.

This could entail a reversion of the calculation period for earning a full pension from 47 years back to 40 years.

The 2018 amendment disproportionately affects cross-border workers who may not reside continuously in Denmark. Reverting to the old rules ensures that these individuals are not unfairly penalized and can plan their retirement with greater certainty.

4. An indication of the entities to be involved in the possible solution(s)

The advised entity (Region Sønderjylland-Schleswig, Regionskontor & Infocenter) has pointed out discrimination of cross-border workers to the Ministry of Foreign Affairs and Ministry of Employment in an email. The issues are similar to what is enquired about and addressed in this report

(translation from Danish to English):

“New Danish rules for calculating state pension discriminate against cross-border commuters and have retroactive effect

member states, these periods can be aggregated to meet the eligibility criteria for social security benefits in any member state.

Denmark has amended the Pension Act (current version as of 24 February 2023: 'Lov om social pension' LBK nr 527 of 25/04/2022). It came into force on 01.07.2018 and applies to all citizens who reach the individual state pension age after 01.07.2025. Anyone who reaches the regular retirement age before will be entitled to 1/40 of the state pension per year worked in Denmark. Anyone retiring after this date will only receive approximately 1/48 (simplified and degressively less over the years). All periods after the age of 15 are included.

According to the new rules, you get a full pension if you have been insured in Denmark for 9/10 of the time between the age of 15 and retirement age.

This wouldn't be a problem if there weren't two significant disadvantages for cross-border commuters.

Firstly, cross-border commuters typically do not have the option of having their periods after the age of 15 counted, whereas people living in Denmark do.

Secondly, many cross-border commuters have organized their lives on the basis that they earn 1/40 of the state pension annually for their working hours. New and old commuters have been able to adjust to this since 1 July 2018 and make a choice.

However, those who reach the personal state pension age after 01.07.2025 and have already earned insurance periods as of 01.07.2018 will lose their pension rights retroactively.

The rules are designed in a way that discriminates against non-Danish citizens in particular, as it is typically Danish citizens who fulfil the conditions for full pension. If you live and grew up in Denmark, you will not be affected if you have exercised your right to free movement and worked in another EU country, as you will receive a foreign pension for your years abroad and still have your years in Denmark counted after the age of 15.

The calculation from the age of 15 also points towards discrimination against foreigners. It is typically citizens born and raised in Denmark who benefit from such an early start to the calculation period. As 40 years was enough to obtain a full pension, this was put into perspective. The effect is further amplified by the new calculation method.

It also discriminates against those concerned. If you reach retirement age on 30 June 2025 and have worked in Denmark for 20 years, you get 20/40 of the Danish state pension, but if you reach retirement age on 2 July 2025, you only get about 20/48 of the pension for the same 20 years.

The solution here would be a scheme where pension rights earned before 1 July 2018 are preserved and only pension rights earned thereafter are calculated according to the new rule.

Regarding the calculation period, an equalizing factor could be created for cross-border commuters and newcomers from the EEA and Switzerland.

During a conversation with the Danish Ministry of Employment in September 2023, it became clear that the legal perception is different. For further investigation, an application for an external expert to investigate the matter must be submitted as part of the b-solutions program."

The email led to a video meeting where the issues were discussed. The Ministry did not recognize the issues, and no further action was taken.

However, this report maintains that obstacles still exist for cross-border workers in the Region Sønderjylland-Schleswig, between Denmark and Germany.

5. A full list of all laws and executive acts relevant to the case indicating the place and date of publication of the legal texts with the correct citation⁹ both in original language and in English

Europa-Parlamentets og Rådets forordning (EF) nr. 883/2004 af 29. april 2004 om koordinering af de sociale sikringsordninger (Tekst af relevans for EØS og for Schweiz), *EUT L 166 af 30.4.2004, s. 1–123*.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *OJ L 166, 30.4.2004, p. 1–123*.

LBK nr 1123 af 21/10/2024 Bekendtgørelse af lov om social pension
LBK no 1123 of 21/10/2024 Executive Order of the Social Pension Act

LOV nr 442 af 08/05/2018 Lov om ændring af lov om social pension, lov om Arbejdsmarkedets Tillægspension, pensionsbeskatningsloven og lov om retssikkerhed og administration på det sociale område
(Skærpede krav til optjening af folkepension og førtidspension, hurtigere udbetaling af tillæg for opsat pension m.v.)

Act no. 442 of 08/05/2018 Act amending the Social Pension Act, the Act on Labour Market Supplementary Pension, the Pension Taxation Act and the Act on Legal Certainty and Administration in the Social Field
(Stricter requirements for earning state pension and disability pension, faster payment of supplement for deferred pension, etc.)

LFF 2018-02-07 nr 138 Forslag til lov om ændring af lov om social pension, lov om Arbejdsmarkedets Tillægspension, pensionsbeskatningsloven og lov om retssikkerhed og administration på det sociale område
(Skærpede krav til optjening af folkepension og førtidspension, hurtigere udbetaling af tillæg for opsat pension m.v.)

LFF 2018-02-07 no. 138 Proposal for an Act to amend the Act on Social Pension, the Act on Labor Market Supplementary Pension, the Pension Taxation Act and the Act on Legal Certainty and Administration in the Social Field

⁹ For reference, see the [b-solutions: Solving Border Obstacles. A Compendium 2023-2024-2021, p 210 – 218](#). Here is an example for an EU regulation “Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European personal pension product (PEPP), OJ L 198, 25.07.2019, p. 1”. Here is an example for a national law: “Federal Act of 30 November 1973 on the implementation of intergovernmental agreements on the surveying and marking of the state border and on the regulation of certain matters of the state border (State Border Act), Federal Law Gazette, No 9/1974”.

(Stricter requirements for earning old-age pension and disability pension, faster payment of supplement for deferred pension, etc.)

6. Other relevant aspects to this case if relevant

None

7. References

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Nicolas Rennuy, The general principles of Regulation 883/2004 and their outer limits in Pennings, F., & Vonk, G., *Research Handbook on European Social Security Law*. Cheltenham, UK: Edward Elgar Publishing, Published: 24 Nov 2023, p.204–224, DOI: <https://doi.org/10.4337/9781800886353.00018>

Cases:

C-55/00 (Gottardo)

C-85/96 (Martínez Sala)

C-443/93 (Vougioukas)

Links:

https://region.de/region/dk/ueber_uns/region/DatenundFaktenRegionSjSl_dk.php

https://www.region.de/region/de/presse/aktuelles-view.php?we_objectID=4214