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Barriers to Integration:

Implementation Deficit in the Oresund Region

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Abstract

Member States failure to comply with EU-legislation challenges both the realization of the common market as well as the legitimacy and effectiveness of the European integration process. Integration between Sweden and Denmark in the common Oresund Region has received both regional and national political support as engine to economical development, and as both states are generally known for their high level of compliance with EU-law, conditions for further integration are excellent. Several border barriers are however hindering this development and despite that EU-provisions offer solution to many of these issues, the rights do not reach the citizens of the Region. This paper investigates the underlying causal factors to this paradoxical incompliance, and explains implementation deficit in the Oresund Region as a process involving multiple stages and actors. Failure to apply the studied EU-provisions can be explained by general lack harmonization, resources and knowledge. Furthermore, resistance towards implementation can be interpreted as resistance towards integration and indicates that despite political ambitions to unify the Region and create and open market, managing authorities seem to be influenced by competition rather than cooperation, which is causing standstill in the integration process.

Keywords: Oresund Region, implementation deficit, regional integration

Word Count: 19948

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Map of the Oresund Region

Tendens Öresund (b)

1. Introduction

Proponents of the Oresund region often accentuate the common benefits gained from increased integration between the Danish island of Zeeland and the Swedish region of Scania. For all parties- citizens, workers, students and companies to utilize the vast joint resources on both sides of the strait are often emphasized as a factor leading to increased growth and development. This however requires a free and open market providing mobility for the resources. As Member States of the European Union, a common market should already have been established but there are still major barriers between the states that severely hamper the integration process within the Region. The inability of the two Member States to bilaterally solve these issues has been noticed by both regional cross-border interest organisations such as the Oresund Committee (read for instance Oresund Committee 2010(b)) but also by international organs such as OECD (OECD territorial review Copenhagen, Denmark 2009 and OECD 2003 study of the Oresund Region) and Nordic Council of Ministers, concluding and confirming the damaging effect border barriers have on mobility of workers, integration and consequently regional and national competitiveness.

One of the main achievements as well as ambitions of the development of EU-treaties and secondary legislation is to establish an internal market within the Union. Member States compliance to sovereign EU-law is established in Article 4(3) in the Treaty of the European Union- obligating the contracting parties to "take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union". From a regional integration perspective, it is interesting to consider whether lack of compliance with EU-law can explain why barriers between the two Member States still exists, despite available remedies provided in EU-provisions. References to the Court of Justice have been made in some cases where either side hindered the establishment of the free market. For instance, a few years ago Swedish bus drivers were not allowed to work in Denmark and the issue could not be solved bilaterally between the two states. The matter was not resolved until the Swedish employment agency decided to notify the Court of the situation, after which the Danish authorities backed down

on the issue and changed the conditions allowing Swedish bus drivers to work in Denmark (interview 4).

This exemplifies what I perceive to be the most fascinating aspect of integration in the Oresund Region. The Region is home to a large amount of human capital, workers, companies and knowledge but its mobility and possibility to gain access to the market on the other side of the strait is in many cases hindered. Mobility of people, and especially workers is a prerequisite for increased integration and crucial for the development of the free market, and it is from this viewpoint that this paper takes its starting point. Particular attention will be given to a number of EU-provisions that aims to utilize mobility of workers and make sure that people that are living in one Member State but working in another, are treated in a non-discriminatory manner. The provisions will serve as cases showing how insufficient implementation measures are hindering mobility and precludes frontier workers and citizens of the Region from attaining and enjoying the rights that they are entitled to as EU-citizens.

1.1 Implementation deficit, against all odds?

Integration and implementation of EU-legislation in the Oresund Region is subject to somewhat paradoxical conditions. The Region has in fact the conditions and the tools necessary to accomplish integration and a common market which can be motivated by three arguments: (1) There is an outspoken support for increased integration among both regional and national politicians expressed in for instance national ministerial meetings in 2007 and 2010 and the establishment of cross-border interest organisations such as the Oresund Committee- dedicated to increase integration on a national and regional level. (2) Both Denmark and Sweden are members of the European Union, which is dedicated to create a common market for all its Member States. By adopting multilateral sovereign legislation, the freedom of movement of workers should be established throughout the Union and thus also be applied in the Oresund Region. EU-legislation offers a wide selection of provisions with the sole purpose to guarantee an open market within the Union and can thus be used as an engine driving or rather forcing individual Member States to integrate. (3) Both Sweden and Denmark are generally known to be good implementers of EU-legislation and are in comparison with other European Member States quick to resolve any disputes with the Commission regarding transposition of EU-provisions (Falkner et al. 2005:317). In several

cases however, as will be argued in this paper, the rights as laid down in EU-provisions does not reach the citizens of the Oresund Region, the border-barriers remains and the integration process is stalled.

There are several cases indicating problems in the implementation process that rather creates border barriers instead of solving them. There are other examples of how EU-provisions are insufficiently implemented, ignored or interpreted in a manor that the initial purpose, to facilitate mobility and establishing the open market, is watered down to the extent that they do not provide any useful rights to the citizens of the Region. These somewhat paradoxical conditions, by which the region has all the preconditions to integrate but still suffers from implementation deficit, sparked the interest to examine the lack of implementation measures more in detail.

I will argue that the problems of applying EU-law and securing that citizens and particularly frontier workers are guaranteed their rights can be traced to both regional/local levels, national and international level. Implementation is not merely a matter for the international or national level but involves the full spectrum, from national ministries to the individual local officer responsible to apply the provisions. EU-law is applied and interpreted differently within and between the different national systems, which is creating further issues for frontier workers in the cross-border setting of the Oresund Region. Lack of both internal and external harmonization is thus a factor explaining why provisions do not reach the citizens of the Region. Insufficient resources or economical factors, causing actors on all levels to resist application, can also explain lack of transposition or application.

The particular provisions chosen in this study are selected as they all aim to facilitate conditions for the mobility of workers and have (if implemented correctly) a decisive effect on the integration in the Region. Resistance towards implementation can thus be seen as resistance against integration. This paper will be dedicated to investigate and describe the underlying reasons behind implementation deficit as an explanation to the thus paradoxical inadequate integration process in the Oresund Region.

1. 2 The Oresund Region

Although Swedish accession to the European Union in 1995 surely linked the two countries stronger together in a common market, regional integration has been a common project that outdates both the Maastricht treaty and the Union itself. The ambition to (once again) unite the two regions can be traced back to 1658 when Sweden gained power over the region of Scania through the treaty of Roskilde, following the Swedish occupation of the island of Zeeland (Bergman 2006:156-158).

Delimitation of the Oresund Region in itself is a continuous process and cannot be neither politically nor geographically determined. Through the years, it has taken many forms depending on political ambitions and visions in connection with economical and business considerations. In the beginning, the Oresund Region consisted of Copenhagen and the City of Malmo with vicinity. But today the concept of the region has grown to include the entire island of Zeeland, Lolland, Falster, Bornholm and the Region of Scania (Jerneck 2007:221ff) (see map p.5). Regardless of how the Oresund Region will be defined in the future, this is the geographical delimitation that will be used in this paper.

The entire region consists of about 3,7 million inhabitants, 2,5 on the Danish side and 1,2 on the Swedish side. The region has some 250.000 individual businesses, about 1,8 million jobs, 11 universities with some 165.000 students and 12.000 scientists. It is the biggest and most densely populated conurbation among the Nordic countries with the highest average level of education among its citizens and it consists of 26 per cent of the total GDP of both Sweden and Denmark put together (ÖRUS, Oresund Committee 2010(b), Tendens Öresund (a) 2010). Advocates of integration in the Region argue that its resources should be utilized together in a spirit of co-operation rather than competition in order to create an internationally competitive conurbation. Individually, each municipality or region cannot act alone on the global market, rather, integration is needed to create a common market in which knowledge, goods, services and labour force can move and be relocated within the Region (ÖRUS 2010).

Integration has increased considerably since the opening of the Oresund Bridge in July 2000. Before the bridge, some 2000 commuters made the daily journey across the strait on hydrofoil-boats and ferries. When commuting reached its peak however, just before the global economical instability reached the region in 2009, some 20.000 people commuted on a daily basis from Sweden to Denmark (Tendens Öresund (b) 2010:106).

Although the flow has somewhat diminished during the last years, Denmark is still a major market for Swedish labour force, especially young people who finds it difficult to find employment in Sweden (interview 6). One major explanation for the diminishing flow of people, or indeed integration in itself, is related to the substantial border-barriers that still exists between the countries and that affects the everyday lives of frontier workers. Many of these issues are stemming from the, in many cases, extensive differences between the national legislation of the two states, especially in terms of tax-regulation, social insurance system and labour market conditions (see Oresund Committee 2010(b) and Jerneck 2007:223). These issues do not only make the everyday lives of frontier workers more complicated but can also be a deterrent factor for potential cross-border job seekers or businesses wishing to expand its market across the strait. Integration is depending on the increased interweaving of people, business and interests in the region and as long as these border-barriers remain unsolved, the vision about the final merger between the Swedish and Danish side will not become reality (Oresund Committee 2010(b)).

Similar to many other European border regions, regional and local politicians has created a transnational interest organisation to further the development of the region (Nilsson, Sanders & Stubbegard 2007:9): The Oresund Committee was established in 1993, two years after the governments in Denmark and Sweden had signed the agreement to build the Oresund Bridge. Then, as today, the Committee functions as an important political platform to further the integration between Scania, Zeeland and Bornholm. Within this context, local and regional politicians and civil servant discuss and strives to formulate the geographical, political, administrative, economical and social barriers (Nilsson, Sanders & Stubbegard 2007:10). The general purpose is to facilitate the development of a common labour- and housing market, but also to increase the synergy effects of sharing knowledge, innovation, trade, education, culture, sports and recreation (ÖRUS 2010:6). In brief terms, the Oresund Committee is the platform from which further integration in the region can be accomplished and is in itself an expression of the political will on both national, but particularly on regional level, to increase integration between the two states.

1.3 Borders, barriers and integration

As the vision of the Oresund Bridge finally became reality in the summer of 2000, many were those who expected a swift and smooth regional integration. Some anticipated a borderless region to be established as soon as the first car had crossed the 8 kilometres cable-stayed bridge. This however, was not to be quite as simple and integration turned out to be far more difficult to accomplish than expected (Nilsson, Sanders & Stubbegard 2007:7).

Workers and businesses alike found themselves confronted with several barriers of different character, making everyday life as a cross-border commuter or establishment difficult, in some cases to the extent that it actually deterred people and companies from seeking to establish across the strait. So contrary to what many anticipated, the bridge between the two states seemed to have reminded citizens, companies and politicians about the fact that an actual border still exists.

When investigating integration, we need to establish how we define the term itself, and here it is important to distinguish between two types of integration, namely: negative integration, which refers to the actual barriers needs to be removed in order to establish contacts and economic transactions between parties. Positive integration, on the other hand, referrers to the creation of common institutions and norms. The purpose of positive integration is not merely to regulate interaction between individuals, companies etc. but also to limit the effects of for instance deregulation. Interplay between the two kinds of integration is not unusual in advanced processes of integration. Furthermore, spontaneous integration does generally not occur without the support provided by conscious political action (Jerneck 1999:175).

The integration process in the Oresund region will in this paper be examined from the perspective of lack of implementation of EU-provisions, and missing positive effects insufficient implementation has on the integration process. Focus will thus be on the negative integration but it needs to be pointed out that this cannot be disconnected from positive integration. As mentioned, political will to solve border barriers is a necessity, and without political guidance, determination and belief in the common benefits of an open region, integration will come to a standstill. As I will argue below, political inability or unwillingness can play a crucial part in why provisions (with the purpose to open up the market) are not sufficiently transposed and in fact do not reach the citizens of the region engaged in cross-border activities, both in Denmark and Sweden.

Thus, positive integration, or in this case the general attitudes among politicians and other involved actors to implement EU-provisions have a major effect on integration between the two states in the Oresund Region.

1.4 Delimitation

The OECD-report presented in 2003 (the first of its kind focusing on a border-region) noted that physical integration in terms of physical mobility and infrastructure is well developed within the Region, but integration demands further harmonization of rules and general conditions for cross-border employment. Administrative practice is also seen as a factor preventing integration as well as tax- and social security issues. Another problem was identified in the lack of mutual recognition of professional qualifications (OECD 2003:4,8). With mobility of workers identified to play a key role in the integration project, this research will focus on border-barriers and particular parts of Union-legislation that deals with mobility issues.

The empirical cases laying the foundation for the analysis will mainly consist of three particular EU-provisions: (1) Regulation 883/2004 on the coordination of social security systems. (2) Regulation 987/2009 laying down the procedure for implementing Regulation 883/2004. And (3) Directive 2005/35/EC on the recognition of professional qualifications. The focus will thus be on secondary legislation even if some references will be made to the primary rights of freedom of movement for workers as laid out in article 45 and 49 in the Treaty on the Functioning of the European Union. The selected provisions would, if sufficiently implemented and correctly applied, solve several border barriers that affects the daily lives of thousands of frontier workers in the Region.

2. Methodology

2.1 Qualitative research

As the empirical data forming the basis of the analysis of this study will be qualitative, I will briefly examine the advantages and pitfalls common to qualitative research projects. Similar examination will follow in this chapter regarding additional methods applied in this research process namely: case study and directed approach to qualitative content analysis.

Qualitative research is not to be considered as a single research strategy, or a single set of theoretical principles or method, it is rather a wide-ranging theoretical base often concerned to explore the subjective meanings through which people interpret the world within particular contexts. Within the framework of qualitative research, different open-ended methods can be used and combined, offering the researcher to collect detailed information in a relatively closed setting (Jupp 2006:249). Qualitative research is open to basically any source of information expressed in words and the data collection process and analysis of the data is often continued throughout the entire research process. The qualitative research process is thus often distinguished by the constant interplay between collection of data and analysis that produces a gradual approach and understanding of the chosen research issue (Walliman 2006:129).

Qualitative studies can be criticized to lack the rigour of quantitative research, that it produces "soft" data that is subjective and difficult to replicate and often based on small samples or case studies. The approach has also been linked with general difficulties in meeting the usual scientific criteria of validity, reliability and representativeness. However, there has been a debate regarding the extent to which these criteria's derived from quantitative research can and should be applied to the nature of qualitative research. The question is whether claims against the conduct of quantitative research can be transferred to qualitative research, given the vast differences the two approaches have, both in terms of how an issue is examined and especially by which means. Its openness to the complexity of a certain issue can actually prove to give more understanding of a certain subject than quantitative research as every answer cannot be measured, and even if it could, understanding of what is being measured

and how to interpret the result could very much depend on deeper understanding in the subject. By this line of argument, qualitative research has been increasingly used lately for theory testing as well as theory generation (Jupp 2006:249).

2.2 Collecting and analysing qualitative data

In terms of collecting qualitative data, the process in itself can be quite a challenge. Necessary documents may not be available or key interviewees may be hard to identify or even getting to participate in an interview. Another major challenge lies in the researchers ability to clearly determine and chose what data is relevant to the research question. Researchers who have a qualitative approach often gather large amount of raw material, or data, and the ability to sort out and categorise relevant information from this data is crucial to the end result (Walliman 2006:85). The collection of data is a varied process and the researcher can rely on a multitude of sources and interviews. I will use interviews both as a means to gather information regarding the actual conditions for frontier workers in the Oresund region in relation to EU-law, but also in order to obtain insight into what factors are causing insufficient implementation. For this purpose, semi-structured interviews will be used as it allows both for the interviewee to speak freely but also because the interviewer can to some extent steer the conversation into the specific areas of interest in order to gain information and understanding of social phenomenon and attitudes, using both standardized and open-format questions (Walliman 2006:92,131).

This paper aims to investigate lack of implementation in the Oresund Region from the perspective of integration and in particular in relation to frontier workers mobility within the region. Six interviewees have been selected that can offer both a general and in-depth description of the cross-border problems due to implementation deficit in the Region. The respondents are all civil servants or officers working with international or cross-border issues in their respective agency. They are particular suitable as informants as they have years of experience and knowledge about cross-border barriers, social insurance issues, employment, the building and construction sector and other areas of interest to this study, for instance on how EU-provisions are applied in single cases concerning frontier workers. In connection to the interviews, which were conducted either in person or by telephone, the respondents were informed that participation to this study is both voluntary and anonymous. In accordance with

the agreement of secrecy, references to interviewees throughout this paper will be labelled with a number, and transcripts and notes from the interviews will not be published as appendix to this paper.

In addition to use interviews, data will be collected and analysed from other written sources such as legal documents, reports, articles national notifications on implementation measures etc. The gathered data will be analysed with the help of qualitative content analysis (directed approach), a method that will be further discussed below.

2.2.1 Categorizing the data

The relatively free form of interviewing, and the large amount of written data, will accumulate into an exceptional mass of data which will be quite difficult to process in its raw form. Hence the data needs to be organised, categorized and coordinated into sub-groups in each particular category. This process of shaping the raw material into understandable sections of data is usually referred to as coding. Codes are the labels or tags that are used to allocate meaning to the collected data and helps to organize the data, stemming from interviews or other written sources, providing the first step in conceptualizing. Coding also helps the researcher to avoid and prevent data overload (Walliman 2006:135).

The coding process is depending on the researchers creativity and ability to see patterns and distinguish what the data is telling us and how it fits in with the predetermined research question. The process is thus particularly sensitive to biased interpretation as the researcher may knowingly or unwittingly choose to look only at things that are in line with his or her preferences or beliefs. If we only acknowledge the data that confirms our predispositions, we are victims of our own selective observations (Chambliss 2006:6).

This possible pitfall can however be avoided in several ways. In grounded theory for instance, the researcher should enter the coding phase completely without any predetermined hypothesis or theory that might risk affecting his judgement or the analysis of the data. The analytical process continues until saturation point is reached by which new data cannot contribute anything to the process (see for instance Chambliss 2006:218 or Wasserman et al. 2009). But researchers do not have to go so far as grounded theory to avoid the problem of selective observations. Most often in qualitative research, the analytical concepts are continuously tested throughout the analytical process against new observations. The very idea

is to question and develop the initial statement or theory by adding new and independent pieces of information to the equation and this process continues throughout the entire data collecting- and analysing phase (Chambliss 2006:200).

2.3 Case study

The case study approach is particularly suitable for in-depth investigation of one or more examples of a current phenomenon, employing a variety of sources of data. This method is distinguished for its flexibility both in terms of the many areas in which it can be used but also the variation and number of cases that can be used in the study (Jupp 2006:20). Its focused and structured characteristics combined with the close in-depth investigation of relevant details of the chosen cases, makes the method especially suitable for evaluating policy and to examine how a certain policy is put into practice (Jupp 2006:20) and is thus a suitable approach to use when investigating implementation deficit.

By studying deviant and irregular cases, case studies are also well suited to derive new hypothesis and variables. Even if the study itself is driven to some extent by predetermined theory or hypothesis, the researcher can find additional data and thus develop new complementing theory, provided that the research process is kept open to new influences and additional information (George & Bennet 2005:21).

A case is defined by George and Bennet as an instance of a class of events- referring to a phenomenon of scientific interest. A case can thus be defined as anything that the investigator choose to study with the aim to develop theory regarding the causes of differences or similarities between cases of a particular class of events. A case should serve the researcher as a well defined example of the subject he or she wishes to investigate and the decision about what class of events to study and which theories to use determines what data from the case is relevant to the study. It is thus important to clearly state what the event is a case of (George & Bennet 2005:18, 69). This paper will focus on integration as a result of mobility of workers in the Oresund Region and on how, and why, EU-provisions with the ambition to facilitate integration do not reach the citizens of the Region. This ambition requires in-depth investigation, which makes case study particularly suitable to use as framework of research design. Reasons for lack of implementation will serve as the class of event and the cases will

comprise of regulations and directives (which will be further presented in a chapter below) that has caused barriers to mobility and integration in the region.

One of the main criticisms of the method is that in most circumstances, the individual cases are not sufficiently representative to allow for generalization to other situations. This is however a critique that can be directed towards other methods as well and is not typical for case studies. On this note however, it is important to study the case in-depth and with particular rigour (Jupp 2005:21). The ambition of this paper is not to create generalizing theory, it is rather to thoroughly investigate the underlying reasons for lack of implementation in this particular field or in particular cases. If the findings can be applied to other situations, that is naturally positive, but not the purpose. It is instead to look at the phenomenon of integration deficit in the Oresund region from an implementation perspective, using particular pieces of EU-law to illustrate *how* and *why* EU-law is insufficiently implemented. Another important criticism directed towards case study methods is biased selection of cases. This can occur when the researcher knowingly or unwittingly selects cases that lead to a particular outcome, or single out cases that will established the predetermined theories or hypotheses (George & Bennet 2005:23,24). The cases in this study are selected with the motivation that they concern frontier workers and in particular because they offer solution to some of the major border barriers in the Oresund Region.

2.4 Directed approach to qualitative content analysis

Analysing the large amount of data collected during the research process requires a method to categorize the data in reference to the predetermined hypotheses (which will be defined in the following chapter), and also a method that allows new data, outside my frame of reference, to be acknowledged and included. For this purpose, direct approach to qualitative content analysis will be used.

The general ambition with directed approach to qualitative content analysis is to validate or conceptually extend existing theory or prior research about a certain phenomenon that is partially incomplete or would benefit from deeper scrutiny. Theory on the subject that already exists can be helpful in order to determine a research question and can provide predictions or relationships between potential variables. This facilitates for the researcher to determine the categorisation of codes and the helps to develop the relationships between codes.

In the light of the previously mentioned problem with selective interpretation of data to fit the predetermined theory or hypothesis, this method consists of using existing theory as means to create understanding of the data. Researchers can begin by using theory to identify key concepts or variables as initial coding categories. Data that cannot be placed within any of the predetermined codes will be temporarily placed in a separate category and will be analysed as a sub-category or new category to the existing codes. In this way, the theory does not exclude any data from the analytical phase but encourages new types of information into the process and the results from analysis either supports or contradicts the predetermined theory or hypothesis. In this way, pre-existing theory is either refined, extended, enriched or even rejected, supported by evidence presented by showing codes with examples and/or offering descriptive evidence (Shannon 2005:1282).

3. Theory

This chapter is dedicated to describe the development and substance of the different theories explaining implementation deficit among the Member States of the Union. The ambition is to summarize the relevant theoretical framework into hypotheses, which are used to in the analysis of the empirical material to categorize and give meaning to the collected data as outlined in the previous chapter.

3.1 Realizing implementation deficit

The European Union has in its relatively brief existence evolved from an instrument for centralizing the steel sector between the once mortal enemies of the continent, into an extremely strong international organisation that enjoys the power to regulate within a large variety of policy areas. Many researchers have however since the 1980s uttered concern about the alleged implementation deficit- that the member states of the union escapes its duties to evade the intrusive influence of the EU. Despite the raised concerns, it was not until the beginning of the nineties and the development of the single European market, that the Commission took notice of the issue. With the enforcement of the free market came some 300 measures, most of them Directives that needed to be transposed into national legislation. However, while progress at the legislative phase was functioning over expectation, compliance within the member states was poor and in 1991 the transposition rate among the twelve states of the Union averaged around a mere 65 per cent and only 24 directives had been transposed by all member states.

Lately however, the track record has improved with an average 98 per cent, (Mastenbroek 2006:1104) but as I will argue in this paper, that member states officially are considered to have implemented a certain EU-provision does not necessarily mean that it reaches the citizens. For instance, only about 43 per cent of the Union Directives are transposed within the official time limit (Haverland 2007:775), which creates an uncertain legal security among the citizens of the Union and particularly for citizens involved in cross-border activities as frontier workers who can find themselves in a situation where EU-laws are implemented in their state of residence but not in their state of employment due to a delayed implementation process. Furthermore, incompliance jeopardizes the effectiveness and legitimacy of the entire

European integration process and threatens to cause severe damage to the possible benefits of the open market (Svendrup 2004:31).

3.1.1 Four stages of the implementation process

To investigate implementation deficit, one needs to consider both extensive abnormalities from the general ambitions of the specific EU-legislation as well as minor deviations in the transposition process. Both, as will argue below, can lead to substantial problems for citizens to access EU-provisions that severely hamper concretization of the free market and integration (Zhelyazkova 2011:2). Investigating policy implementation has been connected with the concept "textbook conception of the policy process". The policy process is in this view divided into a number of different stages. The process is *sequential* in the sense that one stage leads to another, it is *differentiated in function* as each stage represents a distinctive activity required by a system to move to the next stage, and *cumulative* in the sense that each round of activities produces results that are fed back into the process (Nakamura 1987:142). To concretize this description from abstraction, this paper will include the following stages into the implementation process: *problem formulation stage* (national and international public and private interests express need of new or amended legislation), *adoption stage* (provisions are adopted within the EU-institutions), *implementation stage* (the provision is transposed into national legislation) and *application stage* (the provision is finally realised through application of the competent authority). Explaining why states fail to comply with certain provisions need to be investigated from a broad perspective and requires awareness and deeper analysis of all stages. I will argue that most relevant factors explaining implementation deficit in the Oresund Region can be linked to the *implementation* and *application* stages.

3.1.2 Directives or Regulations?

A general perception has been that EU integration is, to various degrees haunted by an implementation deficit (Bieber 1988:339ff). Incompliance among its member states threatens to undermine the credibility of the Union as a policy initiator- sovereign to national legislation. That member states respect the provisions laid down by its common Union institutions in forms of regulations and directives, many would argue is essential to its entire

purpose. Therefore, it is not surprising that much research has been conducted on the issue of EU policy implementation. However, most research has been concentrated on the transposition of directives. This can be explained by the particular level of influence that Member States have over the implementation process itself. With directives, as one of the major legal instruments of the EU, a large part of the decision-making process is delegated to the national level. This freedom is established in article 288 in the Treaty on the Functioning of the European Union, allowing Member states to choose the form and method for the transformation of directives making it possible to take account of specific national matters in the implementation process and securing the sovereignty and position of the national legislatures (Borgers 2007:1362). As directives only states the goals and ambitions of the policy, it is up to the individual Member State to, within a set time period, legislate and make necessary arrangement to reach the stated ambition of the provision. This procedure is thus more sensitive to any resistance on a national level, as it enjoys a large amount of freedom to interpret and incorporate the ambitions into national law (Trieb 2008:5).

EU-regulations, on the other hand, automatically become a part of the legislation of the national legislation and no legal transformation by Member States is required. This means, at least theoretically, that the same provision is effective throughout the entire Union. But, analysis of regulations shows that there is no guarantee that the law itself is applied identically throughout the community (see Pag and Wessels 1988:199). This can be explained by several factors. From this perspective, one can argue that the instrument of regulation should be a far more effective tool than the directives to obtain a high level of uniform compliance as the former offers far less opportunities for policy drift and shirking than the latter. However, the effects might actually be the opposite, that it is the inflexibility of regulations works to its disadvantage. Member states of the Union represents a high variety of institutional and societal conditions, and the one-size-fits-all characteristics of regulations might be difficult to adopt due to specific domestic circumstances (Trieb 2008:7,15).

The flexibility of directives can make them subject to a higher level of national influence, which can explain why most research so far has focused on the implementation of directives. From this perspective, it would be interesting, as Trieb notes (2008:15) to investigate whether regulations serve as a better instrument than directives in the terms of creating a harmonized and functioning legislation in the Union. The cases in my research show however that both regulations and directives meet difficulties and hindrances on their way from the Commission to the citizens of the member states and shows that how far a provision is actually

implemented depends on the Member state's assessment and willingness on enforcement. Individual member states ability or willingness to putt regulations into practice varies to a large extent and such variations can in a cross-border region lead to considerable difficulties for frontier workers to live, work and gain full access to their rights as citizens. As different interpretations or different implementation efforts are made, the legal structure for persons that operates across national borders differs causing not only confusion but also in some cases actual barriers which hampers further integration.

3.2 Uneven patterns of enforcement activities

Especially in cross-border regions, uneven implementation measures can cause severe complications for frontier workers. This is comprehensively exemplified in a major study on regulation on harmonization of certain social legislation relating to road transport and with the introduction of recording equipment in road transport. In this study, researchers found that the regulation was pursued with different firmness in different countries within the Community. In Germany, interviewees complained about too strict application of the regulation and its content was taken rather literally, that officials check on exact compliance and punish almost every violation. While in France, controls were much less frequent but punishment was however stricter (Pag & Wessels 1988:205). Butt and Baron, who studied the implementation process of the same regulation in the United Kingdom, noted similar example to this problem but form an internal perspective. Regulations and directives often involve a large variety of institutions and authorities in the implementation phase and Butt and Baron noted that this particular regulation was to be enforced either by the traffic examiners, who are officials from the Department of Transport, or by the police, or by both. At the time of implementation there were no less than forty-nine autonomous police forces in the UK, making the issue even more complicated and inevitably led to an uneven pattern of enforcement activity. Furthermore, the same research showed that the complexity of the regulation led to some level of confusion among the ones responsible for applying it. Butt and Baron noted that most police officers, apart from specialist traffic police, did not fully understand the regulations and were thus reluctant to report possible offences (Butt & Baron 1988:711).

Multiple actors thus seem to cause a problem both on a national and cross-border context. There is no guarantee that a regulation will be interpreted, nor observed or practiced in a

uniform matter over national borders, and this issue seems to be present also between different national administrations, and even within specific authorities due to lack of information, training or knowledge of the provision. From a cross-border perspective, this can cause double confusion, as a frontier worker's rights are in the hands of interpretations and practices from multiple authorities in two different national systems.

In the German research evaluating the implementation of the same Regulation, many interviewees complained about the general inflexibility of the provision. Trade unions had put pressure on the German government to prevent exploitation of the drivers who were working long hours. When the regulation was implemented however, complaints were raised from drivers who were forced to stop to rest, thirty minutes from their destination, simply to avoid breaking the law (Pag & Wessels 1988:205). Another example of the negative issues regarding inflexibility is noted by Laffan, Manning and Kelly, who conducted research of the same regulation but in Ireland. It had previously been possible for one driver to operate all over Ireland and complete any of the long routes in the country within 9-10 hours. The eight-hour working limit, prescribed in the regulation, thus required some major reorganisation in the road transport as firms then were forced to hire additional drivers or purchase additional vehicles. The effects of this transformation were estimated to increase the overall operating costs with 25 to 30 per cent. Another economical factor causing debate was the fact that as overtime was likely to be abolished; wage rates would have to be increased in order to compensate for any potential loss of earnings. Several Unions and interest organisations representing the Irish industry and road haulage adopted a completely uncompromising attitude and refused to comply with the provision. In general terms, the regulation met further resistance from the industry that never had been particularly dedicated in the general working conditions, and held a strong resentment and resistance towards any level of increased control laid upon them. Also on a governmental level the regulation was met with strong scepticism, as it saw no justification for the regulation, that it from the Irish conditions and abilities actually distorted competition rather than equalize it. The country is small enough to cross in one day and had no well-developed road-system so the regulation would cause rather than solve problems. In the end, the different interest organisations realized that they had no options but to comply, but their resistance led to a prolonged transformation process and delayed implementation. (Laffan et al.1988:431ff).

The Irish case shows a good example of inflexibility and the level of involvement of various interest groups impact on implementation. Interest groups can however play an important role

in the *problem formulation stage.* If the issue of the regulation is considered of high importance and controversial, its enforcement will be debated widely and will have to withstand considerable scrutiny by several actors who wishes to add their views and opinions on the matter. Stakeholders and interest groups engaged in the subject can offer practical and detailed insight in the formulation stage and failure to recognize and respect their opinions can render the final provision unfit for reality or meet resistance from groups who's opinions were neglected. The general integration attitude among organisation, administration, politicians, interest groups etc. can thus have a negative impact on how the regulations are transposed (Pag & Wessels 1988:226,228). Furthermore, on the *adoption level*, research show that a high level of uncertainty in the wording of the regulations can lead to discretion being exercised at a national level which might be contrary to the initial intention of the provision. Opportunistic governments might thus seek the opportunity to interpret the provision to suit their individual agenda and in a sense, hide behind EU-law in order to push for their own political ambitions. Several researchers have noted this phenomenon of "over-implementation"; particularly those studying directives and this will be further elaborated on below (Butt & Baron 1988:711).

3.2.1 First and second wave of implementation theory

As stated above, research on implementation of EU provisions initiated in the 1980s, have almost exclusively been focused on implementation of directives and this research has gone through three analytical phases/waves. The first wave was distinguished by its clear bottom-up perspective. Researchers aimed to understand the implementation deficit from the perspective of European integration and the emerging European Union. This debate was strongly influenced by neofunctionalism versus intergovernmentalist perspective on European integration and whether, why and how much individual member states wanted to transfer decision-making to a supranational level (Mastenbroek & van Keulen 2006:19). Many researchers pointed out the fit or misfit that occurred between EU-legislation on the one hand, and national institutional and regulatory traditions on the other, as crucial factors determining the outcome of the implementation process (Duina 1997 (focuses on the costs associated with implementation), Duina Blithe 1999. Knill & Lenchow 1998:610). If the Directive requires major transformation of the managing institutions, implementation suffers and vice-versa- when a directive has the opposite effect and strengthens the national institution,

implementation is successful (Duina 1997:157). This theory is based on the assumption that national policy-makers want to uphold the status quo. If a member state and its institutions are unable to influence the decision-making process in the "uploading phase" as to fit its own national interests and uphold status quo, it will resists implementation in the "downloading phase" by any means such as for instance delaying the process or not legislating on a sufficient level to reach the general ambitions of the directive. Implementation from this perspective is depending on the *goodness of fit* with national ambitions, resources, institutional capacity etc.

This theory has however been rejected on several occasions since the late nineties and first to do so was Knill and Lenschow (1998) who tested the hypothesis with data from environmental directives in the UK and Germany. They found that only three out of eight cases are in line with the goodness of fit hypothesis and some directives, which did not require any major institutional transformations were transposed with huge delay. At the same time, some directives, which required large amount of adaptation, were transformed without any difficulties. Similar conclusions were drawn by other scholars testing the hypothesis on different implementation processes (Mastenbroek & van Keulen 2006:23,24). The argumentation here is rather clear, the goodness of fit argument does not provide us with an overall explanation to the implementation deficit as research has proved that other factors must be relevant. However, simply because it cannot provide us with an explanation of all cases, it might prove to be accurate in some cases which is why I do not want to disregard the theory altogether. Both Sweden and Denmark have a well developed system of communication between the national level and different domestic interests and stakeholders, inviting the latter to give opinions on provisions in the early phases of *problem formulation stage* and *adoption stage* (Svendrup 2004:27,34). Institutions that are required to transpose and put the directives into practice thus have a good opportunity to voice any prediction or argument that might cause any misfit in the *implementation stage.* As these actors have the option to be part of the "uploading phase", there should be no reason to believe that there would be any issues in the following "downloading phase".

3.2.2 Third wave of implementation theory

The question of over-implementation was one of many new theories evolving in the third wave of implementation research. If a directive requires a considerably comprising and even costly reorganisation, it might actually be transposed smoothly if the overall ambition is coherent with the general political ambitions of the government (Trieb 2003:24). Furthermore, if the aims of a certain directive receive wide party political support, the sitting government might actually "over-implement" the directive and thus go beyond the binding standards of the directive. This in turn can provoke additional conflicts about the additional, non-compulsory issues and give rise to deployment in the transposition process (Trieb 2003:24).

On a general note, the third wave of EU-implementation studies is marked by a plurality of theoretical and methodological approaches and contributed to broaden the empirical and theoretical perspectives in order to get a fuller picture of the conditions that drive domestic implementation processes (Trieb 2008:10). One particularly interesting take on implementation deficit is the *enforcement approach*- explaining non-compliance as a result of cost defiance. Where the costs outweigh the benefits, states will try to evade these burdens by refusing to comply with the provision (Downs et al. 1996:397). Other approaches stressed the domestic lack of administrative and financial capabilities as the main reason for noncompliance.

The theoretical insight that these approaches have provided are however rather inconclusive. Some find evidence for that the number of veto-players has an impact on legal compliance, others do not. Some argue that the required changes accompanied with a directive have a decisive effect on the non-compliance, others find the opposite to be true. The only theory that seems to be supported in most quantitative research of the third wave is various aspects of administrative capabilities or lack of resources (Trieb 2008:11). Examples of this can be found in Haverland and Romeijn (2007). Who concluded that administrative inefficiency and pressure resulting from inter-ministerial coordination are both significantly associated with transposition delays. Some states simply lack the sufficient administrative capabilities to transpose directives within the set time frame. Also, the complexity or ambiguity of a directive itself can cause transposition problems (Haverland & Romeijn 2007:771-776).

3.3 Concluding hypotheses

This brief summary of relevant theoretical considerations seems to suggest that there is a difficulty to establish any law-like generalisations and to find one simple isolated causes that could explain the complex issue of implementation deficit (Falkner et al. 2005:317). Many different attempts have been made, especially in the third wave, to compare non-compliance to different variables to find some overall conclusive reason, but this has proved to be quite a challenge. The implementation process is such an extensive, broad and varied process and depends on the content of the individual provision itself. The process also involves a large number of actors, all with their own individual agenda, ambitions and views on how provisions should be implemented.

The complexity of the implementation process itself should serve as a factor explaining why it is so difficult to establish an overarching theoretical framework of why right within the provisions do not reach the citizens. This is causing particular problems for frontier workers as they find themselves affected by the implementation process of two states. The large amount of theory on implementation deficit suggests that the process of implementation and application of EU-law differs between all levels within and between the Member States of the Union. In a cross-border region, these differences cause a double burden for the individual citizen as he/she is affected by the national implementation, interpretation or/and lack of application of EU-provisions adopted to utilize mobility. Integration is strongly linked to the ability of persons to move within the Region/Union, but as will be argued in the following chapter, both Sweden and Denmark suffers from a deliberate or involuntary implementation deficit that fails to utilize increased mobility and thus also fails to increase integration within the Region.

This chapter has provided us with some explanations to individual cases and the intention under this heading is to summarize these into hypotheses that can be used categorize and code the empirical data. The general ambition, as outlined in the method chapter, will be to validate or conceptually extend the existing theory and in a sense create meaning in the information while simultaneously searching for additional explanations to the causes to why EU-provisions do not reach the citizens of the Oresund Region despite the good conditions for increased integration. The hypotheses are as follows:

Multiple actors: Incompliance to apply EU-law can be found in many levels of the implementation process. From outright governmental resistance to local administrations and authorities to interest groups acting on all level has been described as a factor causing implementation deficit. **Lack of harmonisation**: Complexity and lack of internal harmonized interpretation of how the provisions should be applied by the managing authorities can also cause uneven patterns of enforcement. **Increased costs**: Implementation of provisions that involves higher costs for either the authority assigned to apply the provision, or actors affected by it, can lead to increased resistance. **Lack of resources:** competent authorities on all levels lack the competence or other resources to sufficiently implement the provision. **Flexible Directives opens of for interpretation and shirking**: Regulations are far less flexible than Directives and should make it harder for actors on all levels to deviate from applying the provision in a correct manner. Directives can, unlike Regulations, be implemented to suit the general preferences of the particular national decision-maker and even be subject to over-interpretation in order for governments to push through their own particular political agenda. **Goodness of fit-argument:** implementation rigour is depending on the preferences of the particular national actor.

4.

Implementation Deficit in the Oresund Region

Cross-border problems for workers have not been unrecognized on a European level. On the contrary, the Union has realized the particular conditions that apply to frontier workers in many border regions in Europe (see European Commission 2010). Consequently, several EU-measures has been implemented particularly directed to solve the problems for this group of EU-citizens, today appreciated to consist of around 1 million people throughout the Union (Commission 2012). This chapter is dedicated to investigate the implementation process of some of these provisions of specific importance to frontier workers in the Oresund Region. This is interesting from the perspective that despite the Oresund Region having good preconditions for the creation of a common market, there are still numerous border barriers hindering mobility and thus integration in the Region. Some of these barriers, as will be argued below, could be solved by the correct application of EU-law, but implementing actors fails to deliver the rights to frontier workers in the Region for several reasons, which will be examined in the next chapter.

4.1 National level compliance

European integration and the free market are to a large extent depending on its Member States ability or willingness to submit to the decisions taken within the context of the Union. To create a common market, it is crucial that the same rules are uniformly applied throughout the Community to provide equal sets of right to its citizens, its companies, their goods and services. A free market requires an open arena on which actors are treated without discrimination and are protected, by law, from being subject to disadvantageous competition based on their nationality (Zhelayzkova 2011:1. Versluis 2007). If EU-law is implemented differently, or not at all, throughout the Union there is a considerable risk that competition across the market is severely skewed and the entire advantages of keeping an open market is

compromised (Versluis 2007:50). From an integration perspective, the functioning and existence of an open market is of crucial importance. National decision-makers often hold the key to resolve border-barriers either by bilateral agreements but also by harmonized implementation measures and taking the cross-border perspective into account. We thus need to consider the general attitude towards the Union as a possible explanation for implementation deficit (this does however not include Regulations as they should require no additional legislation on a national level apart from already existing national law that might contradict the new EU-provision).

Swedish accession to the European Union was far from self-evident and it was by with considerably narrow vote (by 52.2 to 46.8 per cent) that Swedish citizens voted for membership in the referendum in 1994. Swedish scepticism can be explained by several reasons, one of them being the slightly provocative theory that there is a widespread belief among Swedes that Sweden is simply better than the rest of Europe. Since the end of the World War II, Sweden represented the pinnacle of an advanced industrial society on the continent and considered itself to be a forerunner in terms of democracy, welfare, corporate market economy and its citizens enjoyed a considerably higher standard of living in comparison with other states in the EC/EU. However, with the economic recession in the early 1990s, Sweden sought membership in the Union, not as a result of politicians being convinced of the positive effects of European integration, but rather to secure future economical affluence. In other words, integration into the European Community was considered to be the cure for depression that had affected the country (Miles 2005:2).

Although Danish accession to the Community was established already in 1973, resistance towards European integration has not lost focus or intensity over the years. Danish reluctance can be seen in for instance the voting against two important referendums on major Community development aiming to deepen integration: in 1992 the Danish voters rejected the Maastricht Treaty and in 2000 they voted no on Danish affiliation to the Euro. Much similar to the Swedish case, Danish somewhat restrained accession and relation to the Community can be explained by the difficulty to fully identify with the rest of Europe. As with Sweden, this problem can be explained by a general feeling of superiority, that the Nordic countries are somewhat better than Europe. The main political argument leading to final accession was, as in Sweden, revolving around the economical benefits or rather; fear of being left out from an increasingly strong market (Friis 2002. Waever 1992:77).

Regardless of this rather bleak depiction of attitudes towards the Union in Sweden and Denmark, the two countries are renowned for their generally high level of compliance with new EU-provisions in comparison with the rest of Europe (Falkner et al. 2005:317). Although transposition of EU-legislation has improved over time, there is a simultaneous increase in the number of conflicts across the Union that are occurring as a result of insufficient implementation. A general tendency is that larger Member States are involved in more conflicts and these conflicts are with a higher frequency resolved by court rulings. Smaller states however, and particularly the Nordic states have proved to be both good implementers and generally quicker to resolve any EU-law related conflict without necessarily involving the Court of Justice (Svendrup 2004:24).

Mutual history and common identities in comparison to other EU-states should pave the way for a smooth integration process between Denmark and Sweden. The fact that the states are renowned for their high level of compliance and quick to resolve issues concerning EU-law should make the Oresund Region a particularly bad example to study from the perspective of implementation deficit as the states from this line of reasoning should be exemplary implementers. The states should according to this description pose no or little resistance to increased integration within the Region as a result of insufficient transposition of EU-provisions. But what makes the Oresund Region such an interesting case to study is that integration does not occur despite these good conditions. As members of the European Union, an open and barrier-free market should have been established in the Region, enabling mobility of workers. And with the substantial political support expressed by both national and regional politicians on both sides of the border, bilateral agreements should already have established a well functioning integration in the Region. Such bilateral agreements have been made in a number of issues, but many barriers still remains and these constitute a severe hindrance to further integration.

Many of these problems are related to the differences in the national legislation of the two states, especially laws regarding social security, tax and general workers and employer's conditions. (see Oresund Committee 2010(b)). National legislation is created to apply to the conditions of the particular state and decision-makers, both in Stockholm and Copenhagen, many times fails to recognize the cross-border perspective. A law that might facilitate conditions for a national citizen can, and do in many cases, create problems for cross-border workers. Disharmonized national legislation between the two states constitutes a major barrier

in the Oresund Region and this also includes disharmonized implementation of EU-provisions. This will however be further debated below.

4.2 Frontier workers in the Oresund Region

Today, the population in Europe is increasingly mobile and it is very common for a citizen to commute over country borders to work. It is also getting increasingly common for people to maintain several different jobs simultaneously to secure income. This trend can be seen also in the Oresund Region, especially since the opening of the Oresund Bridge. Although frontier workers are quite common in this conurbation, ambitions to seek employment over borders do not come without some major administrative problems. As will be described below, frontier workers are literally forced to abstain from seeking employment in the two states simultaneously, which has obvious negative effects on integration, growth and development in the Region and furthermore contradicts the principle on freedom of movement within the Union.

Over twenty five per cent of the respondent in an investigation made in 2009 among frontier workers in the Oresund Region replied that they could imagine taking up an extra employment in the country of residence. About 10 per cent of the Danes living in Sweden and around 20 per cent of Swedes living in Sweden but working in Denmark has been forced to turn down job offers in Sweden due to administrative complications occurring as the legislation of two member states would then apply (Oresund Committee (b) 2010:23). Frontier workers inability to work on both sides of the strait does not only inhibit their right to take up employment wherever they find fit within the Union, it also prevents growth in the country of residence as it misses out on tax revenue and competence. That mobility of professionals within the region is prevented constitutes a large problem both for the employers who have limited access to the regional competences, but also to the professionals themselves as they can only be active on one half of the labour market in the Oresund Region.

4.3 Coordination of social security

Beginning in the early seventies with regulation 1407/71 and 574/72, the European Community has made effort to coordinate the different social security schemes within the EU. Since then, the provisions has been continuously updated and extended in order to ensure the rights for citizens to move freely within the Union and not be treated differently than one would in the country of residence. The social security systems of the member states of the European Union are today to a large extent coordinated but it is up to each member states to decide the conditions under which social benefits are determined and thus depends on the traditions and culture of each country (EUR-Lex. 2011). States are thus free to formulate their own social benefits within the framework of Regulation 883/2004, which is the current provision coordinating the European social security systems. This however can cause complications for persons who are employed and belong to the social security scheme in one state but residing in another.

Regulation 883/2004 generally reaffirms the rights laid down in previous regulation 1409/71 but there are however some changes and additional measures that has been introduced (The Department for Work and Pensions 2010). One of them being the firm provision that a citizen should belong only to the national legislation of one Member State. This can be considered a seemingly harmless alteration but, as will be described under the next heading, it has created real hindrances for people seeking employment or receiving remuneration in two states simultaneously.

4.3.1 Working in Two Countries

Regulation 1408/71, preceding regulation 883/2004, established the rules for workers who are working in more than one country but for the same employer to be subject to the social security scheme in the country of residence, if he/she pursues part of his/her activities in this country. Under regulation 883/2004 however, an employee will only belong to the social security legislation of the country of residence if he/se performs a substantial part of his/her activities in that country (substantial activities are defined as 25 per cent or more of the working time, remuneration or turnover as established in article 14(8) in implementation regulation 987/2009). This changed the situation for many frontier workers within the Oresund region as employees, working less than 25 per cent now should belong to a

completely new social security legislation. With regulation 883/2004 it was further established that an insured person is subject to the legislation of a single member state only and the member state concerned is the one in which the employee pursues his/her undertaking (Article 11).

The rights of an employee with one single employer are thus firmly established, but for an employee with two different employers in two different states- rights are still uncertain. Furthermore, that a person can only belong to the legislation of one member state cause complications for persons who want to seek employment in another member state while receiving severance pay from his/her former employer. This problem was actualized some time ago when a major pharmaceutical company shut down its production site in southern Sweden, leaving thousands of engineers to seek new employment. Many of them, unwilling to leave the region, made efforts to find new employment in Denmark but as they received severance pay from their former employer, this was not possible (interview 5).

Severance pay is to be consider a cash benefit and as established in article 11(2) in 883/2004, a person receiving such remuneration is to be considered to belong to the legislation of the country in which its former employer is registered. If one of these engineers was to be employed by a Danish employer, that employer is forced to hire him/her on Swedish terms and thus for instance be forced to pay payroll tax in accordance with the Swedish legal system. As social security in Denmark is funded by additional tax levied on the employee herself (general payroll tax), the employer is not forced to pay any additional social security tax according to the Danish system. A person belonging to the Swedish system would thus be more expensive to hire for a Danish employer in comparison to a person belonging to the Danish system. In Sweden however, social insurance is by law to be paid by income tax levied upon the employer. This means that a person seeking employment in Denmark but belongs to the Swedish system because he/she has some source of income or severance pay from a Swedish employer, has to either cancel his/her employment with the Swedish employer or pay the general payroll tax out of his or her own pocket (as most Danish employers would resist paying this addition tax). This has the practical consequence that frontier workers can only be employed on one side of the strait, which reduces mobility of workers and integration in the region.

4.3.2 Administrative resistance

The formulation in regulation 883/2004- stating that a person belong only to the legislation of one country, thus seem to have created a situation in which people, and especially frontier workers cannot compete on the market on the same conditions. This problem can however be solved simply be referring to article 16.1 of the same provision. It is stated that: "two or more member states, the competent authorities of these member states or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 (thus including Article 11.2 regarding belonging to the country's legislation in which the worker receives severance pay) in the interest of certain persons or categories of persons." The competent authorities, the Social Insurance Agency in Sweden and the Danish Pensions Agency, has the possibility to solve the issue of workers who needs to temporarily belong to the legislation of two states in order to find employment. But it is up to the authorities to grant such exceptions and generally they are reluctant to do so both in Sweden and Denmark. This can partially be explained by the rigid interpretation made by the competent authorities of article 11.1 and the preamble of the same provision, clearly stating that the persons to whom this Regulation applies shall be subject to the legislation of a single Member State only (interview 5).

The question of why competent authorities chose this position towards the regulation can be debated. The member state would clearly benefit from allowing unemployed persons to seek employment in other countries, at least in terms of avoiding paying unemployment remuneration. The receiving state on the other hand might be reluctant to allow competent work force into its market as this would increase the competition and might render its citizens without employment- a protectionist position that is frequent especially among labour unions (interview 6). As it is a matter of cross-border agreement, both parties need to be dedicated to allow procedures for exceptions from the articles binding the frontier worker to the legislation of one member state only. Such agreement however, requires political will and especially information of the actual issue to national decision-makers and relevant authorities, which seem to be lacking. This will be further investigated in the next chapter.

4.3.3 Amending the Regulation

The problem with workers seeking employment on both sides of a national border has been brought to the attention of the EU-institutions by various interest groups. First and foremost, demands has been raised to include frontier workers who are employed by different employers in different member states. As recalled, the original Regulation only provided rights for workers with one employer to work across borders. An amended version of Regulation 883/2004 however aims to solve this issue by allowing a person take up employment for a different employer in the state of residence and still belong to the national legislation of the state of employment as long as the employment in the state of residence does not exceed more than 25 per cent of the total remuneration or working time (according to article 14(8) in regulation 987/2009). The amendment to the regulation is in time of writing to be decided on later this spring by the European Parliament and The Council and according to parliamentarians the changes will meet very little resistance in both institutions (Zeeland EU-news 2012).

The thus soon to be agreed upon changes seem to partially solve the issue regarding which legislation a frontier worker should be subject to. In particular, Danish employers will not be forced to apply Swedish legislation simply because the frontier worker residing in Sweden has decided to, for instance, work extra in the country of residence. Solving this issue by bilateral agreements between the two states has unfortunately not been possible despite national politicians expressing the importance of the issue in relation to integration in the Oresund Region.[1] Lack of national initiatives to the problem have fuelled the need of amendments to the Regulation that today, after many years of intense lobbying from different interest groups, seem to have been fruitful (Nytt från Öresund 2012). This case is showing how EU-legislation can act as a driving force to create solutions to cross-border problems for frontier workers where national political will or ability is missing. The process of amending the Regulation has not however been without national resistance as will be analysed in the following chapters.

[1] For instance during ministerial meetings in both 2007 and 2010

4.3.4 Resistance on a national level

Since both Sweden and Denmark have been aware of the upcoming amendment to Regulation 883/2004, they have also had the opportunity to solve the issue by bilateral agreement and act as a precursor, setting good example and showing political ambition for integration in the region. It seems however that political will is lacking to solve the issue, a hypothesis that is confirmed by the strong resistance expressed by the Danish ministry of tax regarding the solution to the problem with working in two countries.

Ministers from both Denmark and Sweden met in 2010 in Swedish Limhamn to express their concern regarding the issue with employment in two states simultaneously. Both sides agreed to the importance to solve the issue and were ready to sign an agreement on an upcoming press conference. However, Danish Tax Agency requested a second reading of the suggested solution, and after that, the Danish minister changed views and the agreement was subsequently not signed. How come this sudden change of direction from the Danish Tax Ministry? According to several interviews the underlying reason is not political resistance but rather civil servants within the particular ministry that rejected the agreement (Interviews 5, 6).

This does however fail to explain the underlying reasons for why the agreement was rejected. One interpretation expressed in interviews is the general lack of communication between the national institution responsible for legislation and the regional public and private actors in combination with ambitions of the Ministry to export costs to the Swedish side. As one of the most important objectives for any institution is to reduce expenses, sources with insight into the process suggest that this was causing the sudden turn and resistance towards solving the issue with Regulation 883/2004. The civil servants under the Minister of Tax made the conclusion that if people living in Sweden only worked 75 per cent in Denmark and 25 per cent in Sweden (the state of residence), social security insurance should be the responsibility of the Swedish authorities. The general ambition was thus to export the cost of social insurance to Sweden under the premise that Sweden is the state in which the double employed frontier workers are actually both living and working. This argument is however rejected both by regional administrations and the private sector. First of all, the amendment of the provision does not mean that residents in Sweden employed in Denmark will work less in Denmark- it will only give them the opportunity to work extra in Sweden and this do not impose any additional expenses on the Danish authority. Secondly, Danish employers would according to

the Tax Agency's line of argument have to submit to Swedish legislation, causing increased administrative workload for the Danish private employing Swedish workers.

The issue of regional integration is clearly not on the agenda of the Danish Tax Agency as it fails to recognize the cross-border perspective and the added value that solution to the problem would infer on the entire region due to the opening up of the market. It also fails to recognize Danish private interests who mainly supported the suggested amendment as it would relieve many employers of frontier-workers residing in Sweden from having to apply Swedish law, which is unfamiliar for them. From the narrow perspective of the Tax Agency, resistance to the solution of the problem is justified as a means to cut costs and export expenses to the Swedish side (interview 6, 5).

4.3.5 Ignoring the Regulation

Apart from above mentioned resistance to implementation or amendments that would facilitate integration in the Region, there have also been examples when Regulation 883/2004 or its precursor 1408/71 has been completely ignored by practicing authorities. For instance, it is a general problem for persons who are employed in Denmark but forced, due to work related injuries, to early retirement. The Danish system allows for rehabilitation measures to be granted in accordance with Danish law, but under the condition that it is executed in Denmark. This has caused major issues for frontier workers who are forced to sick leave but are due to the injury itself unable or unfit to commute to Denmark to receive the medical treatment they are entitled to. Such a case was brought before the Danish National Social Appeal Board, which is the supreme administrative authority with judicial powers to handle and decide on complaints covering the wide areas of legislation on social matters and employment (Ankestyrelsen 2009). In this case (Ankestyrelsedom 2002-08-23) the Board found that the Swedish plaintiff was treated in accordance with Danish law, which does not allow for medical treatment to be exported and there is thus no cause for discrimination as the same rules apply to Danish citizens. The Board however failed to consider the then effective Regulation 1408/71 and especially Article 19.1(a) stating:

A worker residing in the territory of a Member State other than the competent State, who satisfies the conditions of the legislation of the competent State for entitlement to benefits,

taking account where appropriate of the provisions of Article 18, shall receive in the State in which he is resident:

(a) benefits in kind provided on behalf of the competent institution by the institution of the place of residence in accordance with the legislation administered by that institution as though he were insured with it.

It is thus clear that if the Regulation was not ignored, the conclusion of the Board would have been the opposite, ruling in favour of the plaintiff and allowing her to receive rehabilitation in her state of residence. As the judgement of the Board is precedent, similar cases will and are being refered to this particular judgement, despite its contradiction to superior EU-regulation. This has caused, and continues to cause, problems for frontier workers who are forced to retire due to injury, and issues like this have a deterring effect on existing and potential cross-border workers who, as the example shows, can be left without social security rights if needed.

4.3.6 Disagreement on responsibility

The procedure for implementing regulation 883/2004 is laid down in Regulation 987/2009. Its general ambition is to achieve the smoothest possible operation and the efficient management of the provisions as described in regulation 883/2004. Regardless of its ambitions, enforcement has not been as smooth as expected in its brief time of existence. In the Oresund Region- with its large amount of frontier workers, lack of sufficient transposition of the provision has caused problems for persons who are or have been employed on one side of the strait, but resides on the other. One pressing issue has occurred as a result of the two states inability to solve disputes regarding which legislation a particular individual should belong to. The rights for citizens in this issue is laid down in article 6(2) in 987/2009, stating that:

…if there is a difference of views between the institutions or authorities of two of more Member States about which institution should provide the benefits in cash or in kind, the person concerned who could claim benefits if there was no dispute, shall be entitled, on a provisional basis, to the benefits provided for by the legislation applied by the institution of his place of residence or, if that person does not reside on the territory of one of the Member States concerned, to the benefits provided for by the legislation applied by the institution to which the request was first submitted.

Numerous disputes have occurred between the managing authorities in Denmark and Sweden regarding who should be responsible for the remuneration of citizens who somehow are caught between the national legislation of the two states. This is a matter in which lack of resources plays a major role. While disputes are somewhat inevitable, states and authorities will avoid creating preceding decisions that gives them higher level of responsibility over citizens. Regardless if they live or work in their particular country, they will in many cases (given the possibility) refer the issue to the managing authority in the other State (interview 3 and 2). The issue however, that has caused severe implications for many frontier worker, lies in the inability of the managing authorities to pay provisional remuneration to the applicant in the event of a dispute. Instead, the person who apply within his/her rights for remuneration are left without such compensation until the parties have settled who should be responsible. This process can be rather lengthy, and the applicant can thus be left without compensation for a substantial amount of time (interview 5).

The involvement of managing authorities in two different states in a cross-border region thus seem to create a problem, and the solution for this issue to offer provisional remuneration as stated in regulation 987/2009 Article 6, is not practiced by the managing authorities in either Sweden or Denmark. Gathered from one of my interviews, at least in Sweden, the reason that it is not practiced can be traced to direct orders from the head office of the managing authorities that provisional disbursement should be rewarded with restraint (interview 5). The functioning of an open market does not only include mobility and non-discriminatory access to the entire Oresund market, it should also include that the same social rights are guaranteed to frontier workers as to workers from the national market. Regulation 987/2009 offers a solution to the problem occurring when national administration are in disagreement on who has responsibility of the worker who, by receiving provisional remuneration, is practically treated in the same manner as if it was a purely national issue. But unwillingness among the managing authorities to fulfil obligations under this particular provision and pay this provisional remuneration leaves frontier workers without right, and particularly benefits they are entitled to. Frontier workers are in this way treated different from the national workers and may actually risk being left without remuneration that they are entitled to for a substantial amount of time.

4.4 Recognizing professional qualifications

A central part of the free market of the European Union lies within its citizen's rights to seek employment in another Member State. The free movement of workers is established in article 45 and 49 in the Treaty on the Functioning of the European Union (TFEU), which guarantees citizens rights to be treated without discrimination when applying for work or as a company establishing itself in another Member State. However, a common issue for workers trying to gain access to markets in other member states has been that their competences and educations have not been uniformly recognized throughout the Union. This problem has been recognized by the Commission who enacted several Directives on the subject, but development was slow. So in the mid-80s, agreement was reached to adopt a general horizontal approach and three Directives where adopted which were to co-exist side by side with the previous provisions. With Directive 36/2005, all previous legislation was gathered under one single act making it more comprehensible for Member States across the Union to implement and follow (Chalmers et al. 2010:849). The otherwise rather dispersed collection of provisions were finally summoned under this common umbrella-provision, which was to be implemented in total before 20 of October 2007 throughout the Union. The Directive determines that all education, professional experience and other competences that are acquired in another Member state will be recognized in all other Member States. The Directive also defines what constitutes a regulated profession but final decision on which professions are to be considered regulated, and thus be within the realms of the provision, is up to each individual Member State to decide.

4.4.1 Delaying implementation

Implementation of the Directive has however been rather slow and many Member States were lagging behind in the process, among them Sweden who completed transposition in June 2009 and Denmark completing its transposition process in November 2008 (13 and 20 months behind official deadline). Poor national implementation compliance led to a thorough investigation made by the Commission, who in October 2010 published a report for notifications, confirmation and consultation on the identified shortcomings of the Directive. Apart from noting the delayed transposition of the Directive, the Commission also criticized the Member States and its managing authorities for setting higher standards for foreign

jobseekers than what is prescribed in the provision. For instance, many authorities were demanding extensive Curriculum Vitaes, statement of civil status and certified translations of passports and original diplomas. The member states were also extensively using the exceptions in the Directive allowing them to examine qualification in advance, making Union-wide job searching an unnecessarily complicated venture (European Commission 2010).

4.4.2 High level of competence, but a limited market

In December 2011, the Commission published a revised version of the Directive, which is (in the time of writing) to be decided upon in the European Parliament and Council. Many of the identified shortcomings with the present provision can be exemplified in the Oresund Region. The region contains the highest level of highly educated population in northern Europe and its ability to work and have its competences recognized across borders is crucial for integration (ÖRUS 2010:14ff. Tendens Oresund 2010:16ff).

Problems arising, due to incapability or resistance among managing authorities to allow professionals from the other side of the strait into its own market, has been identified as a major barrier for development and growth in the region (see Oresund Committee (b)). Today, much of the existing national authorisation systems are tailored in accordance with the national educations and degrees. Authorization is thus limited to only one side of the strait, closing the door for professionals with qualifications acquired somewhere else within the Union.

It has been proven quite difficult for professionals formally qualified to perform a wide range of occupations to gain access to the market across the strait, for instance engine drivers, electrical installers, water and sewer system professionals, nurses and other craftsmen (Oresund Committee 2010(b):34). As previously mentioned, the flow of workers has mainly been occurring from Sweden to Denmark so focus in this analysis will be on the measures taken by the Danish government to implement the Directive. But to neglect the Swedish implementation process would be problematic as insufficient implementation could actually be a factor explaining why it is more unusual for Danes to seek employment on the Swedish market than vice versa.

4.4.3 Regulated profession – a matter of interpretation

There are a number of ways by which the Directive itself has been implemented or transcribed into the national legislation causing problems for persons who want to gain access to the Danish market. One particular example concerns the fact that Sweden and Denmark differs to a large extent in the transposition process regarding which professions should be considered to be regulated. Sweden officially presented to the Commission a list of 91 professions that were to be considered regulated and thus included within the realms of the Directive. The Danish list however included 151 different professions. Denmark apparently made a different interpretation of the Directive and included, in comparison to Sweden, many more professions to be regulated. Denmark is however not above EU27 average with 152 regulated professions (see European Commission regulated profession database).

While most regulated professions in Sweden are within the area of medicine and education, the list in Denmark is far more extended and includes for instance various types of craftsmen and construction workers within the building industry. That a profession is regulated means that an applicant needs to get his/her qualifications recognized by the managing authority in the concerned state. This administrative process gives the managing authorities better insight into who is seeking employment on the national market and as described above, foreign applicants can be subject to an extensive review in comparison to workers who are already established on the particular national labour market. Greater demands are thus put on foreign applicants, or rather, applicants who has gained his/her education or experience in a different Member State than the one he/her is seeking to be employed in. This, as noted by the Commission, is making the process of job searching more difficult and contradicts the ambition with the Directive in the first place- to facilitate Union-wide job searching.

Although some additional measures can be taken by the managing authorities within the framework of the Directive to ensure that the competence of foreign applicants is relevant and sufficient for the concerned profession, the national authorities have in some cases (which will be discussed under the following headings) went beyond the provisions in what can be demanded from a foreign applicant seeking authorization. So, by including more professions, the managing authorities increase its influence over who gains access to its labour market and can, in accordance with the critique from the Commission, make higher demands on foreign

labour force. With this in mind, Sweden made a rather open interpretation of the term regulated profession by including fewer professions into the realms of the Directive, and thus seems to allow more foreign workers to gain access to its labour market without further scrutiny of the managing authorities. Denmark, one can argue, went the other way and included more profession to be examined and controlled by authorities.

Although the ambition of the Directive is to create an open market in which professionals are free to, with limited administrative burden, seek employment within the Union, the authorisation process of foreign workers has proved to be a barrier in itself. Different interpretation between Denmark and Sweden regarding which professions should be regulated is first of all creating confusion for frontier workers in the Oresund Region as different laws apply on each side of the border. Some professionals may find that their occupation is included in the directive in the state of residence but not in the state they wish gain access to. Furthermore, if the concerned profession is regulated, this means that the frontier worker will have to endure an often-excessive authorization process before gaining access to the market across the strait. This is causing problems in particular for temporary workers, for instance within the construction industry, which will be described under the following headline.

4.4.4 Prolonged authorization processes

The authorisation process in which a potential employee is examined can be rather protracted-causing problems for both employees and companies. Employers are generally reluctant towards hiring persons without complete authorization, so even if getting the actual authorisation is possible, the problem is to acquire it within reasonable time to, on equal terms with national workers or companies, compete for a position or a contract. It is not unusual that the process time stretches on for four to five months (interview 1), and this is well beyond the time limit established in Article 51.2 in the Directive stating that the procedure for examining an application for authorisation to practice a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the competent authority in the host Member State in any case within three months. However, one-month extension of the deadline can be allowed under certain circumstances. Regardless, it seems that it is rather a rule than an exception that the general time it takes for the managing authority to process an

application is well beyond the time frame set in the Directive (interview 1 & 6, Oresund Committee (b)). This continuous breach of article 51.2 in the Directive is creating a situation in which companies and workers do not compete on the same conditions depending on whether they are Danish or Swedish, or rather, whether they are educated or have gained the competence or experience in Sweden or Denmark. Although the general ambition with the Directive is to open up the market while simultaneously ensuring that general qualifications of the foreign workers are met, the national implementation process and the administrative resistance is hindering this ambition to be fulfilled.

This is in practice causing barriers to potential frontier workers in the region to establish or seek employment on the other side of the strait. Lack of mobility of both labour force and competence is hindering development in the Region as the common resources are not being utilized. As the labour markets are different on both sides of the strait it can be mutually beneficial for both states to be able to use certain professionals or competences that are missing on the national market. For instance, some years ago there was a severe shortage of enrolled nurses in Denmark. Conditions were however the opposite in Sweden so the natural solution to both Danish shortage and Swedish overflow of enrolled nurses was for the latter category to seek employment in Denmark. This was however not possible as Danish authorities did not recognize the competence of Swedish enrolled nurses (Oresund Committee 2010(b):34). Although this particular example was solved through bilateral agreements between the two national competent authorities, the problem still exists within several other professions, some of which will be examined and exemplified below.

4.4.5 Authorization depending on the market

Authorization and willingness of the managing authorities to comply with the Directive also seem to be depending on the general fluctuations within the market of the specific occupation. This is particularly common within the building and construction business, which in Denmark include several regulated professions for instance welders, construction co-ordinators, electrical installers, asbestos demolitionist- to name a few. Sweden and Norway have come to a bilateral agreement giving automatic authorization for workers within the construction business but a similar agreement between Sweden and Denmark has been impossible to

accomplish. Instead, authorization is granted on an ad hoc basis where workers are sporadically allowed onto the market much depending on the general economic situation within the particular market. In good times, there seems to be less problems and authorization process goes smoother. In bad times however, with high levels of national competition, the conditions are the opposite and the border is more or less closed for frontier workers within the building industry. The reason given for this is sheer protectionism, national interests wants to secure its own labour force and avoid costly unemployment in times of economic regression by limiting access of external workers to the national market and thus reduce competition of the scarce number of available jobs. These tendencies are especially visible within the construction business as this sector is particularly sensitive to economic downturns (Interview 4 and 6).

It should however be noted that problems with authorization is not a one-way street and there are examples of when Danish workers have been seemingly arbitrarily excluded from the Swedish market. Especially one case concerning a Danish concrete construction company is interesting because it shows that unwillingness to include a certain regulation within the framework of the provision can cause confusion on which laws that applies in cross-border labour exchange. In this example, a Danish company won a major concrete construction contract in Sweden but was notified that they needed to verify the qualifications of its employees.

After some deliberation between the Danish and Swedish construction organisations, it was established that the workers should attend a course in Sweden to verify the competence of the employees to work with concrete constructions in accordance with Swedish construction law. The Danish company rejected this offer with the motivation that they first of all were held liable for the costs of the course (44 500 SEK/worker), the company also had many years of experience building similar constructions so further education was deemed both unnecessary and costly. The Danish building organisation then turned to the Swedish National Contact Point for recognition under the National Agency for Higher Education managing issues on Directive 36/2005, who replied that since concrete construction is not to be considered a regulated profession within the realms of the Swedish interpretation of the Directive, the question is referred to Swedish construction law, stating that it is up to the involved parties to come to an agreement on qualifications. In the end, it was up to the commissioner of the building project to determine the qualifications of the contractors. The Swedish Building Agency offered to validate the competence of foreign workers, but not without compensation.

So the Danish company withdrew their application referring to the high costs and thus inability to compete with Swedish companies on equal terms (interview 2).

This case could be solved if the concerned profession was included within the framework of the Directive, but as it is not, it is instead refered to arbitrary interpretations of complex national construction legislation. Such foreign legislation is difficult for companies and individual employees to understand which is one of the main reasons why Directive 36/2005 was adopted- to simplify recognition of competences of foreign workers. But as it is up to each member state to decide which professions are to be considered regulated, application of the Directive is uneven between Member States and depend on their individual interpretation/considerations which constitutes a border barrier in itself as it hinders mobility of both workers and companies to operate on both sides of the strait. This in turn limits the competition within the Region to the disadvantage of both consumers, frontier workers and businesses.

5.

Explaining Implementation Deficit

5.1. Costs and benefits

As previously stated, economic factors can and do seem to play a significant role in how Member States choose to interpret Community legislation. As exemplified in the theory chapter, implementation of particular provisions can be combined with extensive costs for the involved parties, public and private, which can be the source of fierce debate over which transposition measures are suitable. Arguments over the alleged costs of regulations and directives can thus lead to serious delay of implementation, misinterpretation or even failure to recognize provisions. In many of the cases studied in this research, authorities or national decision-makers is stretching the boundaries of provisions and although the implementation process is officially completed, the provisions themselves are not effective and does not reach the individual citizen. The Swedish Social insurance Agency has for instance made an excessively rigid interpretation of Article 11.1 in Regulation 883/04, stating that persons should only be subject to the legislation of one single Member State and this is hindering frontier workers to take up extra employment in the state of residence or to seek employment in Denmark if rewarded benefits in cash or kind by their former Swedish employer. Exceptions are granted with reference to article 16 but this demands common agreements by the competent authorities of the involved Member States on when such exceptions should be granted. Neither the Swedish or the Danish authorities have expressed any ambition to come to such an agreement, and the problem for frontier workers is consequently not solved.

In the case of the Oresund region, the Swedish Social Insurance Agency benefits from the general principle that a person should only belong to the legislation of one member state as that being the member state in which he/she is employed. The overwhelming majority of frontier workers in the Region works in Denmark and consequently belong to the Danish social security scheme and if needed, the cost of for instance rehabilitation is laid upon the

Danish side. There are thus strong incentives for the managing authorities not to allow dual legislation as this would lead to increased costs for the Agency (interview 5).

The same reasons can be traced to the lack of agreement on rehabilitation in the country of residence. The Danish authorities have made the legal interpretation that rehabilitation cannot be exported to another Member State, either for Danes or Swedes. This procedure has been established by preceding judgement of the Danish National Social Appeal Board despite provisions established by Regulation 1408/71, which lays down the right to be treated in the country of residence. By this, the Danish authorities disclaims themselves from responsibilities over employees that belongs to the Danish social security system by neglecting them the treatment they are entitled to.

Similar economical reasons can be found explaining resistance within the Danish Tax Agency towards solving the issue with employment in two states. This authority has made the interpretation that allowing workers residing in Sweden to gain extra employment in the country of residence would implicate additional costs for that particular ministry. Instead, they are arguing that the costs of social insurance should be exported to the country of residence given that the employee is active on that particular market. Regardless of the complications this interpretation would infer on Danish employers who would have to adapt to Swedish legislation, this particular office is looking at the issue strictly from an internal economic cost and benefits perspective, and this interpretation is in fact hindering the possibility of frontier workers to take up extra employment in Sweden, which is not only limiting mobility and growth but also contradicts the general principle of a free and open market within the Union.

From the examples stated above, national actors seem to have a rather realist perspective on the integration process in the sense that as long as integration benefits the two parties there is no reason for incompliance, but to shoulder the economical burden of social rights seems to be a matter of firm disagreement. The mentioned examples suggest that where the costs outweigh the benefits, integration is hampered by the states aiming to reduce the economical burdens by refusing to sufficiently implement EU-legislation, thus confirming the theory on costs and benefits as causal explanation to implementation deficit as described by Downs, Rocke and Barsoom (1996).

5.2 Effectiveness of Regulations?

EU-provisions adopted to reduce hindrances on the Community market are in these cases either effectively neglected or deliberately interpreted by the individual Member States to limit the internal costs of practice, and frontier workers are in these scenarios left without rights they are entitled to. As the Regulation itself is insufficiently clear on, for instance, under which conditions exceptions from Article 11.1 (883/2004) is to be allowed, it opens up for arbitrary interpretations of the competent authorities. The wiggle room of the Regulation is thus used to suit the economical preferences of the two Member States, much to the expense of the individual frontier worker who fails to obtain the rights he/she is entitled to. This indicates that despite Regulations in comparison to directives offer less opportunity for policy drift or shirking, implementing actors in both Sweden and Denmark still manages to interpret or apply the provision insufficiently and in accordance with their particular viewpoint, which often fails to recognize the broader perspective and positive aspects of increased integration in the Region. This does not contradict the predetermined hypothesis that Directives are far more flexible and that its implementation process can be subject to higher level of national influence. It does however suggest that Regulations also can and are in fact being subject to implementation deficit caused by levels of policy drift and shirking, but in another phase of the implementation process. Directives can be altered and insufficiently transposed already in the *adoption stage*, when the national decision makers decide which legislative measures should be made. This phase does not apply to the implementation process of Regulations, instead, and as these examples have showed, transposition of Regulations fails in the *application stage* and does not necessarily mean that this type of provision is more effective than Directives.

5.3 Multiple actors and decentralized application

Some level of implementation deficit can be explained by lack of both national and cross-border harmonization between managing authorities. There is no guarantee that multiple actors with individual implementation responsibilities interpret or practice the provision in a similar manner, quite the opposite. As more actors are involved and with lack of sufficient central management, there is a strong risk that provisions provide different rights to different persons depending on the particular managing authority. This issue can be identified in the

final implementation of Regulation 883/04 and 1408/71. As these regulations revolve around social security, pensions and family rights, responsibilities to put the Regulations into practice are to a large extent laid upon the Social Insurance Agency. There are 36 offices only in the region of Scania and due to the complexity and amount of EU-legislation, an international office was created in 2004 to handle these issues centrally. The international offices receive some information on how to handle specific cases relating to new EU-regulation but detailed knowledge is in many cases missing (interview 5). But regardless of the attempt to centralize international issues, there is a strong lack of harmonization between the local offices that receives no or very little information concerning new EU-provisions (interview 3, 5). Thus, knowledge in the local offices, and even to some extent in the international office, about EU-legislation regarding sickness benefits and social security issues is very limited and individual officers are often unaware of how to deal with EU-law. The same conditions seem to apply within many Danish local administrations (interview 5).

5.3.1 Lack of internal and external harmonization

Multiple national actors can thus prove to inhibit the final realisation of EU-provisions in the application stage, both in Sweden and Denmark. But one also needs to consider the cross-border management of the provisions. The Oresund Region, with its large number of frontier workers, requires increased harmonisation between authorities on both sides of the strait in order to fully come to terms with administrative complications affecting frontier workers. Bilateral agreements between authorities in both states have proven to be an effective working process for solving border-barriers, thus increasing the actual integration in the region. These solutions are however most often accomplished on ad hoc basis, managing one single identified issue at the time (read Oresund Committee 2010(b):14-16).

There is thus a need of a broader approach towards solving border barriers by correct implementation of EU-law, or increased harmonisation between the two states in the implementation process. In some cases, failure to recognise each other's interests in the adoption and implementation stage actually causes further problems for frontier workers. Although efforts have been made within the Nordic Council to evaluate potential areas of cooperation between the Nordic countries in terms of EU-provisions. It has successfully initiated and maintained common Nordic positions within various aspects of EU-policy for instance agriculture, fisheries and consumer protection. But there is a lack of knowledge and

political will between the Nordic countries to apply and transpose EU-law so that it does not create any further hindrances (Göteborgsposten 2012).

This can be noticed in for instance rehabilitation issues within the framework of Regulation 884/04 and 1408/71. The provisions are implemented into the national legislations of both Member States, but there are no administrative agreements between the countries on how it is going to be practiced, which is needed in the context of the Oresund region as some parts of the Regulations is to specific concern of frontier workers. In Denmark, a group has been established by the Labour Board (Arbetsmarknadsstyrelsen) that specialize on dealing with rehabilitation for persons that are residents in another country, but this group is for some reason not working towards Sweden (interview 5). Furthermore, the case with the Danish construction company that was obstructed from establishing on the Swedish market gives us another example of how lack of harmonization (in this case referring to recognition of qualifications) causes barriers to integration. The concerned profession in this case was not regulated and thus not within the realms of Directive 36/2005 so the problem has to be interpreted in a wider EU-law related perspective as a question of neglecting the freedom of movement for workers. A solution to the problem would however be to harmonize implementation and include the profession as regulated, thus forcing the Member States to recognize the competence of foreign workers (interview 2). But as has been argued above, even if a certain profession is covered by the Directive, there can still be obstructions in the form of for instance delay in the authorization process.

Employees or companies that are trying to establish on the other side of the strait are in many cases met with administrative resistance making it impossible for them to compete on the same conditions as the national actors. To create procedure and evaluate and harmonize the complex legislation in the two countries demands large amount of time and resources, which seems to be lacking in general. The individual actors affected by these issues do not have the resources themselves to investigate the conditions (interview 2), which may lead to that they avoid seeking employment outside their national market, which in turn has negative consequences for integration in the region as mobility of the labour force is hindered.

Lack of harmonisation in the implementation stage thus seem to exist both on an internal and external level, both within and between national administrations. This causes uneven patterns of implementation, which in the end has major implications for frontier workers as their rights may vary depending on which individual officer handles his/her case. Furthermore, there

seems to be general lack of political will to solve these issues by increased co-ordination between the involved states, a problem that is recognized not only between Denmark and Sweden but throughout the Nordic countries. The problem herein can be placed both within the *implementation stage* and *application stage* and suggests that although EU-provisions may be fully transposed in legal terms, there is no guarantee that the rights will finally reach the citizens.

5.3.2. Lack of knowledge

From interviews made in this research, examples have been mentioned that some managing authorities have been completely unaware of EU-provision, and thus even less able to apply them in a sufficient manner. One interviewee for instance described meetings with municipalities in Zeeland where the participants, who were there to discuss social security issues, were completely unaware of both the sovereignty and even less aware about the actual content of relevant EU-law (interview 5). Another interviewee described from personal experience the generally low knowledge on when and how to apply EU-provisions to individual cases concerning frontier workers (interview 3). Individual officers in the local offices receive no formal training on application of EU-law. Courses are held in relation to issues regarding citizens coming from other countries, but no information on how they are to apply EU-provisions in their everyday cases. Such information is vital, especially in a region as the Oresund region with its many frontier workers whose everyday working conditions would potentially improve as a result of correct application of EU-provisions. So despite officially completed transposition process, the rights inherited within the EU-provisions does not reach the citizens due to general lack of knowledge among them who are responsible to fulfil them.

One interviewee gave a good example of how lack of knowledge combined with lack of harmonisation between the managing authorities in Denmark and Sweden prevents EU-rights to be implemented in individual cases: A Swedish citizen was fired from his job in Denmark, after some time as unemployed in Sweden he became sick and turned to the Swedish Social Security Agency for help. The individual officer he contacted referred him to the Danish Agency, as this was the system in which he used to belong to, but the Danish Agency referred him back to the Swedish side on the basis that since he was fired from his Danish employer they had no responsibility over him. He was thus left without any remuneration as the

managing authorities in both countries refused to include him as they did not know how to handle his particular case. Instead he was pushed between the managing authorities of the two countries (interview 3).

This problem can partly be explained to be an organizational issue. Officers in the Social Security Agency are trained to be generalists, to know little about a wide range of topics. But in more complex issues, such as matters concerning frontier workers, they lack the particular expertise in order to secure the individual of his or her rights, especially concerning EU-legislation. There is no appointed specialist in each local office, and in the end this has implications for complicated cases, including border-workers (interview 3). Furthermore, the level of education that an officer within the Social Insurance Agency is getting has drastically decreased over the years. The organisation lacks the resources or will to properly inform its staff on how EU-legislation is to be applied. Individual officers are also generally prone to rely on the familiar national legislation and thus, deliberately or not, exclude important EU-legislation that can prove to be more than relevant in many cases (interview 5).

5.4 Protectionism

As with the above mentioned cases concerning multiple actors and disability to reason outside the frame of reference of the managing authority, protectionism can be a factor explaining reluctance towards EU-legislation. This does not necessarily have to linked to a general disapproval of the Union as such, but rather against provisions that in a certain time or economic situation aims to open up a certain market. As the free market is more a hallmark than exemption to EU-law, some business sectors are more sensitive than others to new pieces of legislation from the Union. This seems to be quite common within the construction industry- a sector that is particularly sensitive to economic fluctuations. In times of economic crisis, the borders are closed in order to protect the internal work force from outer competition and under opposite economical conditions- the borders are open (interview 6), which can explain the problems with authorization that many frontier workers experiences in the region. Several professions within the construction industry are included in Denmark as regulated and thus within the realms of Directive 36/2005. There should thus in theory not be any problems for Swedish professionals to gain access to the Danish market but as noted, they are obstructed in some cases by prolonged authorization processes.

6. Conclusion

Mobility of frontier workers is of particular importance to the development and growth both for the Oresund Region and the two states involved in this elaborate integration process. The possibility of workers and business to expand its market is mutually beneficial as the utilization of the common resources of the Region increases international competitiveness. As members of the European Union, a multitude of legal acts are effective to ensure the establishment of a free and open market in the Region and both Sweden and Denmark are generally known to be good implementers of EU-provision. But despite expressed political ambition and realization of the positive effects of integration between the two states, several border barriers still exists that are severely hampering the integration process. Many of these cross-border barriers are created when the legal and administrative systems clash but EU-provisions are in many of these cases offering harmonized solutions to these issues. The ambition of this paper has been to investigate the underlying causes explaining how and in particular why implementation of provisions with the ambition to facilitate cross-border activities is not achieved despite the existing good preconditions for further integration in the Oresund Region. In chapter 3, Several hypotheses were extracted from the previous literature on implementation deficit in the Union, not with the purpose to test them but rather to guide and give meaning to the collected empirical data. As previous research and the analysis in this paper shows, it is difficult to extract single factors that are inhibiting implementation. In line with the current status of implementation research, this paper gives a wide selection of possible explanations and underlying reasons causing actors to insufficiently apply or transpose EU-provisions.

In this paper I have concluded that resistance to implement the studied EU-provisions is found on both national, administrational and local/regional level. On the national level, I have argued that incompliance is rooted in economical considerations of the implementing actor. EU-provisions are interpreted and applied in a manner that suits the preferences of the particular Agency in order for it to reduce expenses or extract costly social rights to its counterpart across the strait. National agencies are reluctant towards taking responsibility over frontier workers as showed in the analysis of Regulation 883/2004 and implementation-

Regulation 987/09. The Regulations are in these cases interpreted so that the rights within the provisions does not reach the individual citizens and thus fails to facilitate conditions for frontier workers and enable further integration. Even though implementation of Directives are subjects to higher level of national influence, these findings suggests that also Regulations are exposed to shirking and policy drift, despite them being officially transposed into national legislation. And even worse, Danish National Social Appeal Board neglected the Social Harmonization Regulation altogether in its judgement on whether a person living in Sweden could be rehabilitated in the country of residence.

Agreements that furthers mobility of workers can, and are in many cases possible to obtain, but in terms of concluding agreements concerning costly social benefits, the cases in this paper shows another attitude towards integration among the two states. No side wants to bear the cost of for instance social benefits and it seems from these cases that regionalization across the strait is more influenced by internal competition than of cooperation. This is further exemplified by the protectionist implementation and interpretation of the Directive on Recognition of Professional Qualifications. With the high level of qualified competence within the Oresund Region, common utilization of this resource is key to growth and development. But despite the ambitions of the Directive to enable professionals to work across border, they are hindered by complicated demands and prolonged authorization processes. This is explained to be caused by (particularly within the construction industry) a protectionist agenda of the managing authority seeking to protect internal labour market from external competition in times of economic instability. This case also validates the hypothesis regarding lack of harmonization, which is of particular importance to border regions as they are affected by the implementation process of two Member States. Certain professionals may find that their profession is covered of the rights as laid down in the Directive in their country of residence but not in the country they wish to establish in due to different interpretation of what should be considered a regulated profession.

To harmonize implementation in a cross-border region as Oresund, with its many frontier workers, is thus of crucial importance to avoid confusion and facilitate further mobility. Similar problems with lack of harmonization can also be found within the managing authorities on a local level. In regard to Regulation 883/2004 for instance, there is no unified perception of how the provision is to be applied within the local offices of the same Agency, and even less so between the local offices across the strait. Uneven patterns of enforcement creating legal uncertainty for the frontier workers can thus be explained by the lack of both

internal (within the national/local managing authority) and external (between the local/national authorities on both sides of the strait) harmonization. Similar disabilities to adequately apply the concerned provisions can be traced to the sheer lack of knowledge among the individual officers on EU-law. Despite the many frontier workers in the Oresund Region to whom the provisions do apply, officers receive no formal education and either try to solve border-barriers by using familiar national legislation or refer the issue to the office across the strait for them to solve.

6.1 Discussion

Implementation deficit in the Oresund Region is not only a matter concerning the two Member States, rather, the success or failure of an EU-provision also depends on the compliance of local and regional actors involved in the process, particularly in the application phase. The main causal factor explaining lack of compliance is lack of resources. Either in the sense that the individual managing authority in both the implementation or application phase uses the provisions to suit their own agenda, or in the sense that resources in the form of competence or communication/information between and within the regional and national authorities is insufficient. Resistance towards the provisions can in a sense be interpreted as resistance towards integration, that the implementing actors seeks individual benefits or possibilities to extract costs. It is my interpretation that these actors, rather than seeing the common benefit from collaboration, acts in a competitive spirit.

The clouds do however seem to have a silver lining. A proposition was recently presented in the Danish Parliament suggesting that all new legislation should be examined from a cross-border perspective to avoid the creation of new border-barrier in the Region (Sydsvenskan 2012). It will be interesting to see whether a similar suggestion will be put forward in the Swedish Parliament and in particular how and if this suggestion will function in relation to the implementation of EU-provisions.

The provisions studied in this paper do to a large extent concern the Social Insurance Agency and it is surprising how poorly equipped this managing authority is to adequately apply EU-provisions due to lack of sufficient education and harmonization on the subject. This reaffirms that implementation deficit needs to be considered in all stages of the process and not only by investigating national transposition measures. In the end the provisions concern

the individual citizens of the Region and if the individual officers lacks the tool so supply the rights as laid out in the provisions, national official implementation is meaningless. There is no use in transposing a law if the ones responsible for applying it are incapable of doing so. From this perspective it would be interesting to approach the implementation process of other EU-provisions with the same angle- to investigate the application abilities within other managing authorities to see whether this problem applies to the implementation processes of other pieces of Union-legislation. As one interviewee suggested- individual officers are ingrained into the national systems and thus reluctant towards applying unfamiliar EU-provisions, some are even unaware of the superiority that these provisions have over national legislation. So despite the noble intention of provisions to create an open market within the Union and its individual border-regions, cross-border problems continue to hinder further integration as the managing authorities lacks the resources to apply them.

Implementation is strongly linked to the general attitudes of parties involved in the process towards further integration in the Oresund Region. If they want to, EU-legislation can be used to solve cross-border issues for frontier workers, increase mobility and enable utilization of the common resources in the region. This requires of them the ability to see beyond the individual costs and benefits of implementation and indeed integration in itself. Instead, many actors seem to have a rather protectionist stance towards the open market and considers cross-border activities as a matter of competition rather than co-operation. And under such conditions, integration in the region will come to a standstill despite the expressed support of regional and national decision-makers. To change this mindset and convince the implementing actors of the benefits from integration is a major challenge for political platforms as the Oresund Committee, Gränshinderforum, Oresunddirekt and the Nordic Council. From what I have argued above, only then will implementation be subject to less friction.

7. Executive summary

Proponents of the Oresund Region often accentuate the common benefits gained from increased integration between the Danish island of Zeeland and the Swedish region of Scania. Mobility of frontier workers is of particular importance to the development and growth both for the Oresund Region and the two states involved in this elaborate integration process. The possibility of workers and business to expand its market is mutually beneficial as the utilization of the common resources of the Region increases international competitiveness. This however requires a free and open market providing mobility of the common resources.

As members of the European Union, a multitude of legal acts are effective to ensure the establishment of a free and open market in the Region. But there are still major barriers between the states that are hindering mobility of workers and making cross-border activities difficult and sometimes even impossible and this is severely hampering the integration process within the Region. The inability of the two Member States to bilaterally solve these issues has been noticed by both regional cross-border interest organisations such as the Oresund Committee and international organs such as OECD and Nordic Council of Ministers, concluding and confirming the damaging effect border barriers have on mobility of workers, integration and consequently regional and national competitiveness.

Member States obligation to comply with Union-legislation is firmly established in Article 4(3) in the Treaty on the Functioning of the European Union. But despite responsibility to take appropriate measures to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union, some of the provisions that are adopted to facilitate cross-border activities do not reach the citizens of the Oresund Region. This suggests that there is a general resistance towards either EU-legislation or/and integration between the two countries, which is causing lack of sufficient implementation measures.

Integration and this alleged implementation deficit of EU-legislation in the Oresund Region are subject to somewhat paradoxical conditions. The Region has in fact the conditions and the tools necessary to accomplish integration and a common market which can be motivated by three arguments: (1) There is an outspoken support for increased integration among both

regional and national politicians expressed in for instance national ministerial meetings in 2007 and 2010 and the establishment of cross-border interest organisations such as the Oresund Committee- dedicated to increase integration on a national and regional level. (2) Both Denmark and Sweden are members of the European Union, which is dedicated to create a common market for all its Member States. By adopting multilateral sovereign legislation, the freedom of movement of workers should be established throughout the Union and thus also be applied in the Oresund Region. EU-legislation offers a wide selection of provisions with the sole purpose to guarantee an open market within the Union and can thus be used as an engine driving or rather forcing individual Member States to integrate. (3) Both Sweden and Denmark are generally known to be good implementers of EU-legislation and are in comparison with other European Member States quick to resolve any disputes with the Commission regarding transposition of EU-provisions (Falkner et al. 2005:317). In several cases however, as is be argued in this paper, the rights as laid down in EU-provisions does not reach the citizens of the Oresund Region and the border-barriers remains and the integration process is stalled.

The ambition of this paper is to investigate the underlying causes explaining *how* and in particular *why* implementation of provisions with the ambition to facilitate cross-border activities is not achieved, despite the existing good preconditions for further integration in the Oresund Region. By examining the implementation process of two Regulations and one Directive, I argue that resistance to implement the studied EU-provisions is found on both national, administrational and local/regional level. On the national level, I argue that incompliance is rooted in economical considerations of the implementing actor. EU-provisions are interpreted and applied in a manner that suits the preferences of the particular Agency in order for it to reduce expenses or extract costly social rights to its counterpart across the strait. National agencies are reluctant towards taking responsibility over frontier workers and the Regulations are interpreted so that the rights within the provisions does not reach the individual citizens and thus fails to facilitate conditions for frontier workers and enable further integration.

Even though implementation of Directives are subjects to higher level of national influence, I argue that also Regulations are exposed to shirking and policy drift, despite them being officially transposed into national legislation. The studied Regulations are subject to extensive (mis)interpretation and even in some cases completely neglected by the managing authority.

Agreements that furthers mobility of workers can, and are in many cases possible to obtain, but in terms of concluding agreements concerning costly social benefits, the cases in this paper shows another attitude towards integration among the two states. No side wants to bear the cost of for instance social benefits and it seems from these cases that the Oresund region is more influenced by internal competition than of cooperation. This is further exemplified by the protectionist implementation and interpretation of the Directive on Recognition of Professional Qualifications. With the high level of qualified competence within the Oresund Region, common utilization of this resource is key to growth and development. But despite the ambitions of the Directive to enable professionals to work across border, they are hindered by complicated demands and prolonged authorization processes. This is explained to be caused by, particularly within the construction industry, a protectionist agenda of the managing authority seeking to protect internal labour market from external competition in times of economic instability.

This case also validates the hypothesis regarding lack of harmonization, which is of particular importance to border regions as they are affected by the implementation process of two Member States. Certain professionals may find that their profession is covered of the rights as laid down in the Directive in their country of residence but not in the country they wish to establish in due to different interpretation of what should be considered a regulated profession. To harmonize implementation in a cross-border region as Oresund, with its many frontier workers, is thus of crucial importance to avoid confusion and facilitate further mobility. Similar problems with lack of harmonization can also be found within the managing authorities on a local level. With reference to one Regulation in particular, there is no unified perception of how the provision is to be applied within the local offices of the same Agency, and even less so between the local offices across the strait. Uneven patterns of enforcement creating legal uncertainty for the frontier workers can thus be explained by the lack of both internal (within the national/local managing authority) and external (between the local/national authorities on both sides of the strait) harmonization. Similar disabilities to adequately apply the concerned provisions can be traced to the sheer lack of knowledge among the individual officers on EU-law. Despite the many frontier workers in the Oresund Region to whom the provisions do apply, officers receive no formal education and either try to solve border-barriers by using familiar national legislation or refer the issue to the office across the strait for them to solve.

Implementation deficit in the Oresund Region is not only a matter concerning the two Member States, rather, the success or failure of an EU-provision also depends on the compliance of local and regional actors involved in the process, particularly in the application phase. The main causal factor explaining lack of compliance is lack of resources. Either in the sense that the individual managing authority in both the implementation or application phase uses the provisions to suit their own agenda, or in the sense that resources in the form of competence or communication/information between and within the regional and national authorities is insufficient. Resistance towards the provisions can in a sense be interpreted as resistance towards integration, that the implementing actors seeks individual benefits or possibilities to extract costs. It is my interpretation that these actors, rather than seeing the common benefit from collaboration, acts in a competitive spirit.

The provisions studied in this paper do to a large extent concern the Social Insurance Agency and it is surprising how poorly equipped this managing authority is to adequately apply EU-provisions due to lack of sufficient education and harmonization on the subject. In the end, the provisions concern the individual citizens of the Region and if the individual officers lacks the tool to supply the rights as laid out in the provisions, national official implementation is meaningless. There is no use in transposing a law if the ones responsible for applying it are incapable of doing so. So despite the noble intention of provisions to create an open market within the Union and its individual border-regions, cross-border problems continue to hinder further integration as the managing authorities lacks the resources to apply them.

Implementation is strongly linked to the general attitudes of parties involved in the process towards further integration in the Oresund Region. If they want to, EU-legislation can be used to solve cross-border issues for frontier workers, increase mobility and enable utilization of the common resources in the region. This requires of them the ability to see beyond the individual costs and benefits of implementation and indeed integration in itself. Instead, many actors seem to have a rather protectionist stance towards the open market and considers cross-border activities as a matter of competition rather than co-operation. And under such conditions, integration in the region will come to a standstill despite the expressed support of regional and national decision-makers.

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