



Easing legal and administrative obstacles in EU border regions

Case Study No. 2

Labour mobility

Obstacles for cross-border commuters

(Denmark – Sweden)



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Unit D2: Interreg, Cross-Border Cooperation, Internal Borders

Contacts: Ana-Paula LAISSY (head of unit), Alexander FERSTL (contract manager)

E-mail: REGIO-D2-CROSS-BORDER-COOPERATION@ec.europa.eu

*European Commission
B-1049 Brussels*

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to the Final Report for the European Commission

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Abstract

Cross-border mobility for commuters

Freedom of movement is enshrined in EU law. For economies to be efficient, and create jobs and opportunities, it is especially important in cross-border regions to address obstacles that impact negatively on the ability of citizens from one country to work in a neighbouring country. Failure to do so can result in unfilled vacancies, skills gaps and economic linkages between businesses and between businesses and their employees being impaired, impacting on the prospects for economic health and growth. Commuting between countries is actually more limited than it might be expected and especially in the EU15 group of Member States. There are multiple, complex reasons that are interrelated and that provide obstacles to those wishing to commute from one region to another in an adjacent country. These include differences in tax and pension regimes, restrictions on non-EU nationals working in cross-border regions, and restrictions on unemployed workers taking jobs in adjacent regions/countries. The importance of specific obstacles varies between cross-border regions but it is the combination of obstacles that has proven to be a brake on commuting.

The illustrative case in this study is the Öresund region in Sweden and Denmark. There have been close economic links for many years but it took the construction of the Öresund Bridge to prompt an increase in commuter flows. The flows are dominated by commuting from Sweden to Denmark in view of finding higher paid jobs and addressing skill gaps and unfilled vacancies in Denmark's business community. However, local research has shown the economic potential of increased cross-border commuting and has suggested that commuter flows could be increased to the advantage of the region, its business and employment base. Öresund has an evolved governance structure that has made those obstacles that hinder economic integration a priority, and has planned actions to address them. In respect of commuter flows some obstacles have been tackled but a set of interlinked obstacles are part of the current programme to address all legal and administrative obstacles. These include: taxation of pensions, unemployment benefit affiliation and restrictions on work placements across the border. The means of handling these obstacles include improved information services, bilateral agreements and court cases (at Member State rather than EU level).

The case study highlights the following general lessons and good practice examples:

- The role of bespoke cross-border organisations (such as the Freedom of Movement Council, and the Öresund Committee) is generally not to solve the cross-border obstacles. Rather, it is about identifying the obstacles and facilitating the process to resolve them. Many cross-border obstacles can only be solved through the involvement and engagement of politicians. An important challenge for many border regions, including the Öresund region, is therefore to provide politicians with the evidence and information that they require to take necessary actions, as well as securing their engagement.
- Targeted and continuous information services can also help improve the knowledge of cross-border commuters

1 Outline of the obstacle (legal and administrative) and the policy context

Cross-border workers are affected by a number of legal and administrative obstacles that are interlinked. For this reason it is difficult to focus on a single obstacle affecting cross-border workers. This case study therefore examines a range of interlinked legal and administrative obstacles affecting the mobility of cross-border workers, focusing in particular on those arising as a result of variations in tax and social security systems. Looking at a combination of cross-border obstacles also fits with the approach adopted in the Öresund region, which is also the focus of the case study. Other obstacles affecting cross-border mobility such as insufficient command of the language in the country of work and the lacking recognition of qualifications are not covered in the case study. The former is not a legal and administrative cross-border obstacle, while the latter is a topic that is being covered by two other case studies carried out in this project.

1.1 The legal framework

The free movement of workers is one of the fundamental principles of the European Union (EU) and is key element of the Treaty on the Functioning of the European Union (TFEU)¹, alongside the free movement of goods, services and capital. Article 45 of the TFEU stipulates the free movement for workers within the EU, without any discrimination with regards to employment, remuneration and other conditions of work and employment. The freedom of movement is further elaborated in Regulation (EU) No. 492/2011² on the freedom of movement for workers within the Union and Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. Although more limited in scope, Regulation (EC) No 883/2004³ on the coordination of social security systems has also helped to safeguard and facilitate the freedom of movement of workers.

The freedom of movement between EU Member States has been further supported through the conclusion of the Schengen Agreement, which came into force in 1995. This agreement removed the internal borders between the signatory countries and enabled passport-free movement across the Schengen area not only for EU citizens but also for people who are legally residing in a Schengen country⁴ and for their families under specific circumstances. However, since the second half of 2015, temporary internal borders have been re-established in some countries⁵. The consequences of this for EU citizens will probably be limited, as freedom of movement remains in force for all EU citizens. The main consequence is that it will take more time to travel to another EU Member State, due to systematic identity checks⁶. For example, in the Öresund region, the identification checks (introduced on 4th January 2016) have extended the travelling time by between 10 and 60 minutes depending on

¹ European Union (2012), Consolidated version of the Treaty on the Functioning of the European Union, Official EN Journal of the European Union, 26.10.2012 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

² European Union (2011), Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement of workers within the Union, Official Journal of the European Union, 27.05.2011 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:141:0001:0012:EN:PDF>

³ European Union (2004) Regulation 883/2004 of the European Parliament and of the Council of 29 April 2009 on the coordination of social security systems, Official Journal of the European Union, 30.04.2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>

⁴ This means that they have a residence permit, a permit to work or a Schengen visa

⁵ E.g. France, Germany, Austria, Norway, Sweden and Denmark. For an overview of border controls in Europe, see: Mission Opérationnelle Transfrontalière (2016) Border controls in Europe <http://www.espaces-transfrontaliers.org/ressources/cartes/maps/show/les-controles-aux-frontieres-en-europe/>.

⁶ Le Cœur, S. (2016), Schengen Agreement restrictions and labour mobility, Global Legal Posts, 3 Feb. 2016, <http://www.globallegalpost.com/blogs/commentary/schengen-agreement-restrictions-and-labour-mobility-41480569/>

the length of the queues. The number of services during rush hour has also been halved, which then led to overcrowding on the trains⁷.

Under EU law, a cross-border worker (or frontier worker) is defined as an individual that works in one Member State and resides in another Member State (political criterion) to which the worker returns daily or at least weekly (time criterion). This definition particularly applies to the social protection of workers within the EU⁸.

1.2 The prevalence of cross-border commuting in Europe

Despite the legal framework supporting freedom of movement, labour mobility between EU Member States – both in terms of transnational migration as well as cross-border commuting – has historically remained comparatively low (e.g. compared to the labour mobility between states in the US)⁹. Nevertheless, cross-border commuting has increased significantly in recent years.

According to Eurostat data, in 2014 1.9 million citizens in the 28 EU Member States worked in a foreign country. This represents a 94 per cent increase compared to 2002. The majority of cross-border commuting (1.2 million) is accounted for by the EU15 Member States, although it is not in proportion with its share of the working age population. As such, cross-border commuting appears to be proportionally more common in the 'newer' Member States than in the EU15 Member States.

A relatively small proportion of those in employment in the EU28 Member States are cross-border workers. In fact, less than 1 per cent of those in employment work across the border. The share of cross-border workers is, however, relatively high in Slovakia (5.7%), Estonia (3.6%), Hungary (2.4%) and Belgium (2.4%). The map included in the Annex offers an indication of the level of cross-border commuting across EU borders.

1.3 Drivers of cross-border commuting

'Pull factors' (responsible for the attractiveness of destination market) are generally regarded as more important than 'push factors' (unfavourable economic indicators that cause an outflow of the workforce) in terms of influencing labour mobility trends. As such, higher incomes and better jobs in the destination region generally outweigh any unfavourable economic conditions (e.g. unemployment, lower incomes) in the region of origin¹⁰.

However, economic conditions and indicators cannot explain the labour mobility flows and trends on their own. Indeed, well-functioning transport infrastructure also facilitates cross-border labour mobility. Differences in housing and/ or living costs can also have an impact on cross-border mobility (this has particularly been the case in Danish-Swedish border area and the German-Dutch border area)¹¹.

⁷ Øresundsinstittutet (2016), Fakta: Effekterna av id- och gränskontroller mellan Skåne och Själland <http://www.oresundsinstittutet.org/fakta-id-kontrollerna-over-oresund-forlanger-restiden-med-tag-till-sverige-med-mellan-10-och-50-minuter/>

⁸ Article 1(f) of Regulation (EC) No 883/2004 on the coordination of social security systems

⁹ See, for example Nerb, G. et al. (2009), Scientific Report on the Mobility of Cross-Border Workers within the EU27/EEA/EFTA Countries. Final Report, MKW Wirtschaftsforschung GmbH & Empirica Kft., commissioned by the European Commission, Jan. 2009, ec.europa.eu/social/BlobServlet?docId=3459&langId=en.

¹⁰ See, for example, Nerb, G. et al. (2009), Scientific Report on the Mobility of Cross-Border Workers within the EU27/EEA/EFTA Countries. Final Report, MKW Wirtschaftsforschung GmbH & Empirica Kft., commissioned by the European Commission, Jan. 2009, ec.europa.eu/social/BlobServlet?docId=3459&langId=en

¹¹ Association of European Border Regions (2013), Cross-border Labour Market Mobility in European Border Regions; and Association of European Border Regions (2012), Information services for cross-border workers in European border regions

1.4 Obstacles and challenges

While EU laws ensure that all cross-border workers are entitled to equal employment rights, working conditions, employment-related benefits, and the same social protection and advantages as national workers, the issues of social security, tax systems and labour law remain a national competence. As such, EU regulations are implemented within national social security and tax systems. This means that cross-border workers are still affected by national variations¹². Indeed, a number of studies have highlighted a number of legal (and administrative) obstacles that are important for cross-border workers, including those related to social security and tax systems¹³.

In terms of social security, EU Regulation 883/04¹⁴ (previously EU Regulation 1408/71) provides rules for coordinating social security systems in cross-border situations. It stipulates that cross-border workers are covered by the social security system of the country in which they work.

For cross-border workers who work in one country and return to their country of residence every day or at least once a week (so called "frontier workers"), there are some specific rules:

- For unemployment benefits, they must register with the employment services of the country of residence and claim benefits there.
- They are entitled to medical treatment on both sides of the border.
- In case of accident at work or occupational disease, they have access to the special healthcare provided in the country of residence in such circumstances, at the expense of the country of work.

Social security systems are not harmonised and vary substantially across the Member States. As a result of such differences, difficulties can still arise for cross-border workers, due to a lack of information, differences in the interpretation of EU and national legislation as well as challenges in the administrative cooperation between authorities at national and local level.

With regard to taxes, bilateral tax agreements play an important role in allocating entitlements to levy tax and providing double tax relief. Such tax agreements tend to be based on the general principles of the OECD model convention with respect to taxes on income and on capital¹⁵. The OECD model stipulates that remuneration is taxable only in the country of employment. Only a few of the bilateral tax agreements recognise the special status of cross-border workers and include specific rules to regulate the taxation of income of cross-border workers generated from employment. A recent study summarised the main obstacles relating to tax systems as follows¹⁶:

- lack of relevant information;
- language barriers;

¹² McEwen, N. and Petersohn, B. (2014) Spotlight on Borders: Insights from the border between Sweden and Denmark, SCCC briefing paper, August 2014, <http://www.centreonconstitutionalchange.ac.uk/publications/research-briefings/spotlight-borders-insights-border-between-sweden-and-denmark>

¹³ See, for example, Nerb, G. et al. (2009), Scientific Report on the Mobility of Cross-Border Workers within the EU27/EEA/EFTA Countries. Final Report, MKW Wirtschaftsforschung GmbH & Empirica Kft., commissioned by the European Commission, Jan. 2009, ec.europa.eu/social/BlobServlet?docId=3459&langId=en; and Association of European Border Regions, (2012) Information services for cross-border workers in European border regions

¹⁴ European Union (2004) Regulation 883/2004 of the European Parliament and of the Council of 29 April 2009 on the coordination of social security systems, Official Journal of the European Union, 30.04.2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:en:PDF>

¹⁵ OECD (2014), Model convention with respect to taxes on income and on capital <https://www.oecd.org/ctp/treaties/2014-model-tax-convention-articles.pdf>

¹⁶ European Commission (2014), Removing cross-border tax obstacles - Organisation and practices in Member States' tax administrations http://www.eikv.org/downloads/2014_study_cross_border_tax_obstacles_final_report.pdf

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- multiple tax filing requirements;
- no clarity about certain procedures and processes within the Member States;
- Member States do not yet use the full potential of the capability of computers and the internet by allowing online filings and applications;
- lack of specialised tax offices for foreign and non-resident taxpayers;
- different or less sophisticated processes for non-resident taxpayers compared to resident taxpayers;
- interpretation differences between Member States;
- difficulties in obtaining relief of double taxation, especially where the other Member State does not issue tax assessments;
- cash flow issues for employers;
- lack of inheritance tax treaties; and
- lack of bilateral and multilateral agreements (besides tax treaties).

The problems encountered by cross-border workers are further aggravated by a lack of, or inconsistent, information (e.g. knowledge about responsible offices, transparency in taxation, etc.)¹⁷. Other obstacles that are important for cross-border mobility include an insufficient command of the language in the country of work and the lacking recognition of qualifications. The latter is covered by two of the other case studies.

The legal and administrative obstacles faced by cross-border workers is well-documented in a large number of border regions. According to the inventory produced as part of the overall study, the obstacle has been documented and assessed in around 15 border regions spread across the EU.

¹⁷ See, for example, Nerb, G. et al. (2009), Scientific Report on the Mobility of Cross-Border Workers within the EU27/EEA/EFTA Countries. Final Report, MKW Wirtschaftsforschung GmbH & Empirica Kft., commissioned by the European Commission, Jan. 2009, ec.europa.eu/social/BlobServlet?docId=3459&langId=e; and Association of European Border Regions (2012) Information services for cross-border workers in European border regions

2 Case Study Context

The geographical case study selected to illustrate and assess the obstacles relating to cross-border mobility for commuters is the Øresund (DK) or Öresund (SE) region, which encompasses the Scania region ('Skåne') on the Swedish side; and the Capital Region of Denmark ('Region Hovedstaden') and Region Zealand ('Region Sjælland') on the Danish side. This is a complex case with many inter-linked obstacles affecting cross-border workers, but it is also well documented and shows interesting examples of methodologies in researching and addressing legal and administrative obstacles.

2.1 The Öresund region

Figure 1. Overview case study region



Source: <https://www.oecd.org/gov/regional-policy/publicationsdocuments/Oresund.pdf>

The Öresund region is, since 2000, physically linked by the Öresund Bridge. There are also ferry services from Helsingborg to Helsingør ("Elsinore" on the map) and Ystad and Bornholm. The region has a population of 3.8 million, of which around two thirds lives on the Danish side (2.5 million).

While the region is responsible for around a quarter of the total Gross Domestic Product (GDP) in Sweden and Denmark, recent GDP and productivity growth has fallen behind other Nordic capital regions and the EU average. The economic growth (as measured by GDP) of the region has been stronger in the Swedish part, which may, in part, be explained by the higher population growth in the Swedish part of the Öresund region. The population in the Swedish part grew by 16 per cent over the period 2000–2014, while in the Danish part it grew by 10 per cent. The productivity performance (GDP per worker/hour worked) has, however, been stronger on the Danish side, although this is somewhat skewed by the performance of the Capital Region of Denmark.

The Öresund region is a service economy, with nearly four fifths of all jobs being in the service sector. There is, however, still a reasonably strong manufacturing presence in Scania and Zealand (accounting for around 20 per cent of employment).

The region benefits from a relatively highly educated population, particularly in the urban areas. As the demand for skilled labour has increased in the region, labour shortages have become an issue in some sectors. The unemployment rate has traditionally been lower on the Danish side, although in recent years this gap has narrowed.

2.2 Cross-border worker flows

The construction of the Öresund Bridge provided dramatically improved accessibility between the south of Sweden and Greater Copenhagen. In 1999, before the Öresund bridge opened, there were around 3,900 daily commuters (and other income recipients) travelling across the Swedish-Danish border. By 2008, the number of cross-border commuters reached nearly 26,000, although this figure has since fallen to around 19,000¹⁸.

The movements across the border are not very balanced. The vast majority (around 90 per cent) commute from Sweden to Denmark – in 2009 commuting to Denmark accounted for more than 95 per cent of cross-border commuting. Notably though, only around 48% of the commuters travelling to Denmark are Swedish citizens working in Denmark. Around 46% are Danish citizens living in Sweden¹⁹.

Until 2008, differences in salaries (higher in Denmark), housing prices (higher in Denmark) and unemployment rates (lower in Denmark) were important drivers for these mobility patterns. Subsequently, the narrowing in housing price differentials, combined with growing unemployment on the Danish side, explain the slight decline in labour and housing market integration²⁰. The fall in commuting since 2008 can also be explained by the global financial crisis, with cross-border commuting being relatively sensitive to market changes. Fluctuations in currency exchange rates also influence cross-border flows²¹. Whilst wages are generally higher in Copenhagen than in Malmö, it is not always straightforward to compare net salary due to very different taxation and social security payment systems.

2.3 Cross-border cooperation to solve the cross-border obstacles

There is a long history of cross-border initiatives and cooperation in the Öresund region. Indeed, different forms of cross-border cooperation have existed since the 1960's, for instance thanks to the Öresund Council and the Öresund Contact Point.

From the mid-1990s, and up until January 2016, the Öresund Committee led the political cooperation in the region. The Öresund Committee was funded by the member organisations (based on the population of each member), the Nordic Council and other external financing sources (including EU funds)²².

An important driving force for cross-border cooperation in the Öresund region has been the desire to create an integrated labour market. The vision and strategy for unlocking the potential of the Öresund Region, as a cross-border region, was formulated by the Öresund Committee in the Öresund Regional Development Strategy (ØRUS)²³.

¹⁸ ICF analysis based on Öresundsdatenbanken

¹⁹ Öresundsdatenbanken

²⁰ Nauwelaers, C., Maguire, K. and Ajmone Marsan, G. (2013), The case of Oresund (Denmark-Sweden) - Regions and Innovation: Collaborating Across Borders", OECD Regional Development Working Papers, 2013/21, OECD Publishing. <http://www.oecd.org/gov/regional-policy/publicationsdocuments/Oresund.pdf>

²¹ The Danish krone is pegged to the Euro, while the Swedish krona is freely floating. This can create exchange rate differentials which translate into substantial real pay increases. This in turn can create an incentive for cross-border commuting.

²² Öresund Committee website: <http://www.oresundskomiteen.org/>

²³ Öresund Committee (2010), Öresund Regional Development Strategy http://www.oresundskomiteen.org/wp-content/uploads/2012/02/ORUS_EN.pdf

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Consequently, an important objective for the region has been to reduce legal and administrative obstacles. The work of the former Öresund Committee, in relation to cross-border obstacles, can be summarised as comprising the following activities:

- identifying new cross-border obstacles in the region and discuss potential solutions with relevant actors;
- forwarding cross-border obstacles to the NCM's Freedom of Movement Council ('Gränshinderrådet') and the recently formed Danish-Swedish government working group (see below);
- raising awareness and working with authorities and governments to enable them to resolve cross-border obstacles;
- working with other border regions to find common solutions; and
- monitoring the situation and avoiding any new additional cross-border obstacles.

In addition to the work that it carries out itself, the former Öresund Committee was also responsible for or led the cross-border obstacle work for a couple of other groups, namely:

- A cross-border obstacle working group – consisting of about 25 Danish and Swedish officials from national and regional authorities, including social insurance agencies, tax authorities or employment services. The group meets at least four times per year and depending on the particular obstacles, different group members also meet in between the formal meetings. The group has also carried out relevant workshops. Working with cross-border obstacles in this way has been considered very successful and effective by the participants. It provides a forum for the relevant agencies and authorities to discuss solutions to cross-border obstacles in an informal setting and without the agency or authority being held accountable for any views expressed.
- An inter-government working group – consisting of civil servants from both the Danish and Swedish government offices (as well as the NCM's Freedom of Movement Council). The group meets at least twice a year and is chaired by the former Öresund Committee. The working group provides the former Öresund Committee continuous and direct contact with civil servants in both countries' government offices and it gives the Committee an opportunity to discuss obstacles that need to be resolved at national level.

Since the 1st of January 2016, the governance structure of the cross-border cooperation in the Öresund region has changed. The Öresund Committee merged with the Danish organisation Greater Copenhagen and established the Greater Copenhagen and Skåne Committee (GCSC). The main aim of the new constitution is to contribute to sustainable growth and employment in the region. One of the core objectives of the GCSC is to support labour market integration and try to remove legal and administrative cross-border obstacles that are deemed to restrict economic growth²⁴.

In addition, the Öresund region also considers providing relevant information to commuters (and businesses) as an important aspect in terms of encouraging cross-border integration. Indeed, a lack of information or inconsistent information can often amplify the cross-border obstacles. Information to commuters and businesses in the Öresund Region is primarily provided by Öresunddirekt. It works with the relevant local authorities and agencies and even has staff from the Swedish Tax Agency, the Swedish Social Insurance Agency, the Swedish Employment Service, and the Skåne County Administrative Board physically present at the information centre. Öresunddirekt consists of two departments - an information centre in Malmö and a

²⁴ Öresund Committee website <http://www.oresundskomiteen.org/om-oss/greater-copenhagen-and-skane-committee/>

webmaster/ communications department in Copenhagen. According to NCM's Freedom of Movement Council and the Öresund Committee, the information service provided by Öresunddirekt helps identifying perceived and/ or experienced cross-border obstacles. As a result, commuters feel more informed and safe. Moreover, as changes to the relevant legislation may take a very long time or may not be feasible, information is a key mitigating measure that allows commuters to make more informed decisions.

The region also benefits from a EURES cross-border partnership, which was set up in 1997 with the aim of assisting cross-border workers and students, as well as employers who wish to recruit labour from the other side of the border. The partnership has established a network of 'EURES advisers' who provide information, advice and employment services. It has also helped setting up four labour market information offices in the Öresund region, where staff from the two employment services work together, with access to the vacancy databases of both sides of the border. It has also organised a series of information seminars for Public Employment Service employees, jobseekers and/ or employers, covering topics such as youth unemployment, entrepreneurship and vocational training.

Cross-border obstacles are also addressed at the national and Nordic level. For example, the national governments of Sweden and Denmark signed a declaration of intent in 2007 to work more resolutely towards an integrated labour market in the Öresund region – 'Two Nations – One Labour Market'²⁵. Moreover, in 2015, a bilateral working group was established between Denmark and Sweden to resolve some of the cross-border obstacles in the Öresund region.

Since 2008 there has also been a special organisation under the Nordic Council of Ministers dealing with cross-border obstacles – the Freedom of Movement Forum. In January 2014, the work of the forum was reorganised and the Freedom of Movement Council was formed. This includes all countries and autonomous regions, as well as the NCM Secretary General and a representative from the Nordic Council.

The secretariat of the Freedom of Movement Council has also together with the regional information services developed a common cooperation platform – the LOTS ('Nordiska Lösningfokuserade Orienterande Tjänstgörande Samordnare') Group - with the aim of streamlining the work on cross-border obstacles. An action plan has been developed and is being implemented. It has also started developing a joint communication plan in order to increase visibility to private individuals, companies and authorities.

2.4 Cross-border obstacles in the Öresund region

Overall, some 42 cross-border obstacles have been identified in the Öresund region by the former Öresund Committee²⁶ (an initial list of 33 obstacles was identified in 2010²⁷ – this list was compiled and tested in close collaboration with businesses, employer organisations, trade unions and private consultancy firms). Most of the identified obstacles relate to the tax, social security, pension and unemployment benefit systems and thus affect cross-border workers. Indeed, more than two thirds of the identified obstacles (resolved and unresolved) directly affect cross-border workers to a greater or lesser extent (see annex).

In order to coordinate the work on cross-border obstacles and provide an inventory of such obstacles in the Nordic border regions, the NCM's Freedom of Movement Council has recently set up a database that collects the identified cross-border obstacles. Although it is managed by the Nordic Council of Ministers, the information included in

²⁵ Arbetsmarknadsministeriet and Beskæftigelsesministeriet (2007) Öresundsregionen - två länder, en arbetsmarknad, 14. Dec. 2007, <http://bm.dk/da/Aktuelt/Publikationer/Arkiv/2007/Oresundsregionen%20-%20tvaa%20lander%20en%20arbetsmarknad.aspx>

²⁶ Öresund Committee website <http://www.oresundskomiteen.org/granshinder-i-oresundsregionen/>

²⁷ Öresund Committee (2010), 33 obstacles, challenges and opportunities, the Øresund model, http://www.oresundskomiteen.org/download/arbetsmarknad/33-an_EN_web.pdf

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the database has been sourced from several actors including the Nordic Council of Ministers' information service Hello Norden, Grensetjänsten and the Svinesund Committee (Norway-Sweden), Öresunddirekt and the Greater Copenhagen and Skåne Committee (Denmark-Sweden) as well as North Calotte Council (Norway-Sweden-Finland). It is also a common tool for all Nordic border regions.

The Freedom of Movement Council also requests its members to submit proposals for cross-border obstacles to prioritise each year. Limiting it to around five cross-border obstacles per member helps to provide focus and means that they can be addressed systematically. Some obstacles are prioritised for several years. Essentially, a cross-border obstacle will remain a priority until it is either resolved or the relevant Government department conclude that it cannot be resolved.

During 2014, the Freedom of Movement Council has given priority to 29 obstacles of which three have been resolved. In 2015, ten of the 36 prioritised cross-border obstacles were resolved (an additional two were written off because the relevant Government departments did not see any possibilities to ever resolve them). Those relating to the Öresund region and affecting cross-border workers include²⁸:

Table 1. Obstacles affecting cross-border workers

Unemployment benefit affiliation (prioritised by SE)
Background: People who become unemployed may lose their right to income insurance if they apply for membership at the wrong insurance fund. This applies to people in Sweden who lose their job as well as to cross-border workers. In order to receive the full income insurance from the Swedish unemployment insurance, it is required by law that one has been a member of a Swedish unemployment fund for an uninterrupted period of 12 months. The person can be credited with any period covered by a Danish insurance fund.
Who is affected: cross-border workers who reside in Sweden and become unemployed and apply for unemployment benefits in Sweden.
Proposed solution by the Freedom of Movement Council: To introduce a four-week rule for persons applying for membership in a Swedish unemployment insurance fund. This gives both the person applying for membership and the unemployment insurance funds the opportunity to find the right insurance fund for the job seeker within these four weeks, without the person in question disrupting the insurance period covered. The Ministry of Labour in Sweden is currently following-up on the results of the 2015 Social Insurance Inquiry.
Special income tax for non-resident artists and athletes (A-SINK or SINK for artists) (DK)
Background: Cultural workers are targeted by a special provision in the Nordic tax treaty. Artists and sportsmen are taxed in both Denmark and Sweden when they work in both countries. Other workers are only taxed in the country of employment if they have no income in their country of residence.
Who is affected: The obstacle primarily affects around 100 permanent or temporary musicians.
Proposed solution by the Freedom of Movement Council: One potential solution for SE and DK is for them to decide that article 17 of the Nordic tax treaty does not apply to artists with permanent contracts. This would mean that article 15 would automatically apply, which in turn would imply that the entire or part of the income is exempted from tax in one country because it is taxed in another country. Another possibility is for permanent cultural workers in SE to pay the ordinary SINK tax instead of paying A-SINK as touring musicians do. This will mean that they will not face additional tax requirements from DK.
Taxation of foreign pension in the country of residence (SE/DK)
Background: Article 18 of the Nordic Double Taxation Agreement has been amended and took effect from 2009 onwards, including in relation to the taxation of pensions (or annuities). The change means that a person who lives in a Nordic country and receives a pension from another Nordic country may in some cases be taxed higher than if the person had been living in the paying country.
Who is affected: People who live in a Nordic country and who receive a pension paid from another Nordic country.
Solution: The relevant Government departments consider this obstacle to be adequately dealt with through the existing tax agreements. This obstacle has therefore been written off.
Unemployed workers cannot get work placement across the border (SE/DK)
Background: People who are unemployed in the Öresund region cannot access subsidised work placement opportunities (as part of active labour market policies) on the other side of the border.

²⁸ N.B.: these are the obstacles that have been/ are prioritised by the SE and/ or DK member of the Freedom of Movement Council

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National labour market legislation is based on the assumption that subsidised work placements take place in the home country or for a Swedish juridical person abroad.

Solution: This obstacle has been written off as it was considered as insolvable by the relevant Government departments.

Source: Adapted from the annual reports (2014 and 2015) of the Freedom of Movement Council

Most of the obstacles presented above are closely related to the general obstacles identified at the EU level, as presented in section 1. They are seen as inter-linked with a programme of solutions.

3 Impact analysis

Cross-border commuting has the potential to generate significant economic impacts, inter alia by better matching the supply of, and demand for, labour. This is illustrated by the case of the Öresund region. Indeed, a recent study for the Öresund Committee showed that cross-border commuting have generated an additional 60 billion SEK (or approximately 6 billion EUR) of value added since the bridge opened in 2000. In 2013 alone, the economic impact was estimated at 5 billion SEK (or 0.5 billion EUR), equivalent of approximately 0.3 per cent of regional GDP). The latter is based on the calculation that cross-border commuting in the Öresund region has resulted in a net contribution of 7,900 to the Danish labour market. Each employee is estimated to create, on average, 600,000 DKK (or around 80,600 EUR) of value added²⁹.

Even though the cross-border commuting is generally regarded as a positive sum game for the region, the balance of benefits varies by type for each side. For example, Denmark benefits from Swedish labour during periods of labour shortages, and the Swedish side gains through avoided unemployment benefits for some of its cross-border workers. However, it is also the case that the Skåne region is losing tax income as cross-border workers pay income tax in their country of employment (primarily Denmark)³⁰ (³¹).

Due to the existence of a range of unresolved cross-border obstacles, the full potential has, however, not yet been reached. For example, a recent study has estimated that cross-border obstacles significantly reduce commuter movements across the border. Specifically, it estimates that the high transport costs, legal and administrative cross-border obstacles (in a general sense), as well as the linguistic and cultural barriers have the effect of reducing the number of cross-border commuters by over 50,000. This is equivalent to around 2 billion SEK (or 0.2 billion EUR) in terms of gross regional product (GRP)³². The analysis is based on the assumption that the relationships in terms of commuter flows reflect those that are present regionally within Skåne and Zealand (as such there is an implicit assumption that all the cross-border obstacles are removed).

The border controls introduced in 2016 have added to the already existing cross-border obstacles. Indeed, a recent report commissioned by the Chamber of Commerce and Industry of Southern Sweden estimates that the border controls between Sweden and Denmark have led to societal costs of 1.5 billion SEK (or 150 million EUR). Two thirds of these costs relate to delays in cross-border traffic, while the remaining share relates to the shrinking market potential (e.g. the number of potential jobs for an employee is reduced; employers will have a smaller pool of workers available to them)³³.

Øresunddirekt and the former Öresund Committee also recently commissioned a report 'Obstacles for an integrated Öresund region'³⁴ which described and estimated the economic impact of six different cross-border obstacles in the region (taken from

²⁹ Öresundskomiteen (2014), Broeffekter och möjligheter i Öresundsregionen, http://www.oresundskomiteen.org/wp-content/uploads/2014/06/33eren_pixi_SE_web.pdf

³⁰ Nauwelaers, C., Maguire, K. and Ajmone Marsan, G. (2013), The case of Oresund (Denmark-Sweden) - Regions and Innovation: Collaborating Across Borders", OECD Regional Development Working Papers, 2013/21, OECD Publishing. <http://www.oecd.org/gov/regional-policy/publicationsdocuments/Oresund.pdf>

³¹ Even though Sweden has been compensated by Denmark for the lost tax incomes since 2004, the compensation is paid to the Swedish state and does not directly benefit the municipalities in the Öresund region where most commuters live.

³² Öresundskomiteen (2015), Ett hav av hinder – en analys av barriäreffekten för pendlingen över Öresund

³³ Handelskammaren - the Chamber of Commerce and Insustry of Southern Sweden (2016), Kontrollernas kostnad - ekonomiska konsekvenser av ID-kontrollerna i Öresundsregionen, <http://www.handelskammaren.com/press/nyheter/nyhet/artikel/kontrollernas-kostnad-ekonomiska-konsekvenser-av-id-kontrollerna-i-oeresundsregionen>

³⁴ Copenhagen Economics (2012) Hindringer for en integreret Øresundsregion, 28 June 2012, http://www.oresundskomiteen.org/download/infrastruktur/Barrierer-for-Oresundsintegration_final-new.pdf

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the report '33 obstacles, challenges and opportunities'³⁵). If only three of these cross-border obstacles were solved, it is estimated that the economic activity in the Öresund region would increase by 1 billion DKK per year (or around 130 million EUR), equivalent to less than 0.1 per cent of regional GDP³⁶. Cost of cross-border obstacle in the Öresund Region, EUR million per year

The impacts presented above do not necessarily reflect the cross-border obstacles that are prioritised in the Öresund region at the moment (see section 2.4). Rather, and due methodological challenges with the quantification of economic impacts for many of the other cross-border obstacles, they are presented here to provide examples of the scale and magnitude of impacts associated with different cross-border obstacles.

The problem tree presented in the annex provides a further overview of the potential consequences and impacts associated with the cross-border obstacles experienced by cross-border workers in the Öresund region.

³⁵ Öresund Committee (2010), 33 obstacles, challenges and opportunities, the Øresund model, http://www.oresundskomiteen.org/download/arbetsmarknad/33-an_EN_web.pdf

³⁶ The three cross-border obstacles identified for the exercise are: no possibility for non-EU citizens residing in Sweden to work in Denmark; difficulties in recognising educational qualifications; and problems with working in two countries simultaneously. Öresundskomiteen (2014) Broeffekter och möjligheter i Öresundsregionen. Converted from DKK into EUR (1 DKK=0.1344 EUR)

4 Solutions and good practice

Out of the 42 cross-border obstacles identified in the region, 12 have been resolved (all of which affect cross-border workers), with a further seven in the process of being resolved (as of November 2015). It is understood from most of the stakeholders consulted that the obstacles that have been resolved to date have in many cases represented the 'low hanging fruit', rather than those that are most problematic for cross-border workers.

During 2015, the following obstacles affecting cross-border workers were resolved:

- Right to rehabilitation at home for cross-border workers.
- Right to membership of unemployment insurance fund after the age of 64 years.
- Possibility to take-up income insurance in Sweden when you work in Denmark.

The first of these is one of the oldest cross-border obstacles that the Öresund Committee has worked with. It is about the right to receive rehabilitation following a workplace injury in the home country rather than in the country of employment. Until now, cross-border workers who have been injured at work, and have required vocational rehabilitation, have had to get it in the country of employment. This resulted in some workers' injuries actually deteriorating as a result of long and tedious journeys for rehabilitation. In line with the Nordic Convention on social issues, the problem has now been resolved through an agreement between the Swedish Social Insurance Agency and the Danish Agency for Labour Market and Recruitment. In summary, the agreement stipulates that the rehabilitation should start in the country of employment, but if that does not work, for one reason or another, the country of residence should take over responsibility for the vocational rehabilitation. The agreement means that those injured at work no longer have to travel across the border to get their rehabilitation. This in turn may give those injured at work an opportunity to return to work faster than previously³⁷.

The right to benefiting from an unemployment insurance fund after the age of 64 years was resolved following a decision by the administrative court of appeal in Skåne. It was found that it is contrary to EU rules on free movement not to allow people aged over 64 years to be in an unemployment insurance fund.

The obstacle relating to the possibility to take-up income insurance in Sweden when you work in Denmark was resolved by some trade unions offering this type of insurance for cross-border workers. Cross-border workers are however required be a passive/ student member of JUSEK at a cost of 45 SEK per month (just under EUR 5). The income insurance is also provided by the insurance company Accept.

The examples above show that the way obstacles are resolved very much depends on each individual case. The obstacles presented above have been resolved through bilateral agreements or through court decisions.

It is also difficult to establish to what extent the solutions to labour market-related cross-border obstacles can be attributed to the work of cross-border organisations, such as the Öresund Committee. However, all stakeholders consulted emphasise that regional cross-border organisations play an important role both in terms of identifying the cross-border obstacles and coordinating a response (and solution) from relevant regional and national agencies and authorities. In the context of the Öresund region, the work of the regional cross-border organisations is further supported by the Nordic Council of Ministers (through the Freedom of Movement Council), which provide an additional link to the relevant national ministries. In particular, the Freedom of Movement Council is an important facilitator when an intergovernmental solution is

³⁷ Öresundskomiteen (2016), Annual report of the Öresund Committee for the Nordic Council of Ministers for 2015 (not published)

required. In the Öresund region, the involvement of the Freedom of Movement Council has provided increased legitimacy to the work with cross-border obstacles and made it easier to highlight these issues at the regional, national and Nordic level. It is, however, important to note that the role of the Freedom of Movement Council, and the Öresund Committee, is not to solve the cross-border obstacles. Rather, it is about identifying obstacles and facilitating the process to resolve them. Most cross-border obstacles can only be solved by legislators. An important challenge for many border regions, including the Öresund region, is therefore to provide legislators with the evidence and information that they require to take the necessary actions, as well as securing their engagement.

In terms of the logic chain between an obstacle being identified and a solution being considered, the approach adopted in the Öresund region (and the Freedom of Movement Council) is, firstly, to define the problem/ obstacle and ensure that it is a genuine cross-border obstacle (rather than an obstacle that affects all workers regardless of their place of residence). Once the cross-border obstacle has been defined, the task is then to identify the relevant stakeholders that can help resolve the problem. This will also help the cross-border organisations to focus their attention towards these organisations. Wherever possible, a socio-economic assessment of the costs associated with the cross-border obstacle is also undertaken. This helps put an economic value on the solution to the problem, which in turn can assist in the prioritisation of cross-border obstacles. In terms of finding a solution to the cross-border obstacles, the Öresund region has made use of informal workshops with the relevant agencies and authorities (these are coordinated by the Freedom of Movement Council and part of the co-financing agreement between the Freedom of Movement Council and the Öresund Committee). Some of the solutions to those obstacles that are in the process of being resolved have evolved from such workshops. An important feature of these workshops is that it provides a forum for the relevant agencies and authorities to discuss solutions to cross-border obstacles in an informal setting and without the agency or authority being held accountable for any solutions put forward. Following the workshops, the solutions identified are reviewed by the relevant Government departments who check the validity and feasibility of the proposed solutions. The process described above can be considered as a good practice model for other border regions to adopt.

Recognising the time and complexities involved in solving some of these cross-border obstacles, almost all stakeholders consulted have also highlighted the importance of having a regional information service for cross-border workers (and businesses). In the Öresund region this is provided through Øresunddirekt. In particular, the information service can help identifying any perceived and/ or experienced cross-border obstacles, which gives commuters the feeling of being better informed and safe. In the Öresund region, the authorities and agencies are directly involved in the financing and delivery of the information service, but this is not a necessary feature of the information service. The important thing is that the relevant agencies and authorities contribute with accurate information and take ownership of that information.

The provision of a physical one-stop-shop solution for information services is made easier in the Öresund region by the fact that there are only a limited number of cross-border entry points, the main one being the Öresund Bridge. The provision of physical information centres may be more costly and less effective for border regions with very long borders and several cross-border access points. An alternative in such regions may be to complement any physical information centres with interactive web-based solutions (e.g. chat functions, video calls, etc.).

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Annexes

Below we present a list the cross-border obstacles that have affected or still affects cross-border workers in the Öresund Region. For each cross-border obstacle the current status is highlighted.




Table 2. Cross-border obstacles in the Öresund Region (as identified by the Öresund Committee)

Cross-border obstacle	Status (as of 3rd November 2015)
Living in Sweden and working in Denmark can lead to social insurance problems when taking on an extra job in Sweden	
Living in Denmark and working in Sweden can lead to tax problems when taking on an extra job in Denmark	
Social insurance benefits when working in several countries	
Right to sickness benefits ('sykedagspenge') in Denmark	
Right to rehabilitation at home for cross-border workers	
Different ways of calculating parental leave	
Danish capital pensions taxed in both countries	
Pension rights across the border can be lost if not actively monitored (work in progress)	
Expensive, and partly impossible, to transfer pension capital (work in progress)	
Unemployed workers cannot get work placement across the border (work in progress)	
Unemployment benefit affiliation (work in progress)	
Problems with unemployment benefits following studies in Sweden when working in Denmark before the studies	
Job seekers with temporary work in Denmark	
Non-EU citizens can work on only one side of the border	
No right to leave of absence for political assignments (about to get solved)	
Unemployment benefit rules unclear for Swedish cross-border workers	
The unemployed looking for work in Denmark receive no compensation for train or boat ride	
Income insurance not transferrable when you move between countries	
The so called 'Fitters' Rule' does not apply in Denmark.	
Difficult to compare taxes	
Slow decision-making processes in relation to 'Expert Tax'	
The 'Twelve-Month Rule' for Danish company cars in Sweden can lead to complications	
Danish solution for dealing with Swedish company cars	
Special income tax for non-resident artists and athletes (A-SINK or SINK for artists) (work in progress)	
Bank transfers take time and cost money	
Train delays lead to huge costs.	
High transport costs across the Öresund border.	
Cultural differences enrich the integration process – but also make it more difficult.	

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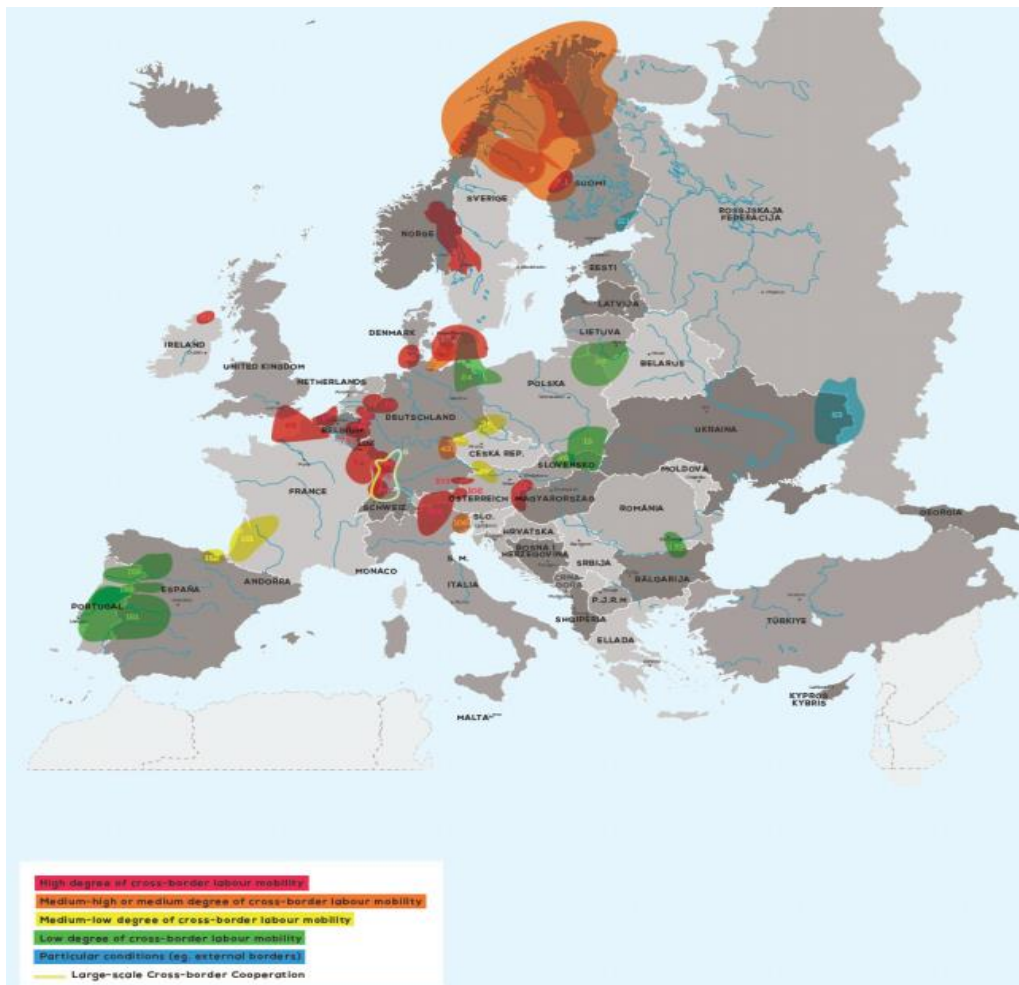
Cross-border obstacle	Status (as of 3rd November 2015)
Assigning Danish personal identification (CPR) number to foreign nationals	

Source: Öresundskomiteen (2015), Gränshinder: aktuell status;
<http://www.oresundskomiteen.org/granshinder-i-oresundsregionen-2/>

Key:  Obstacle resolved;  Obstacle in the process of being resolved; and  Obstacle not resolved

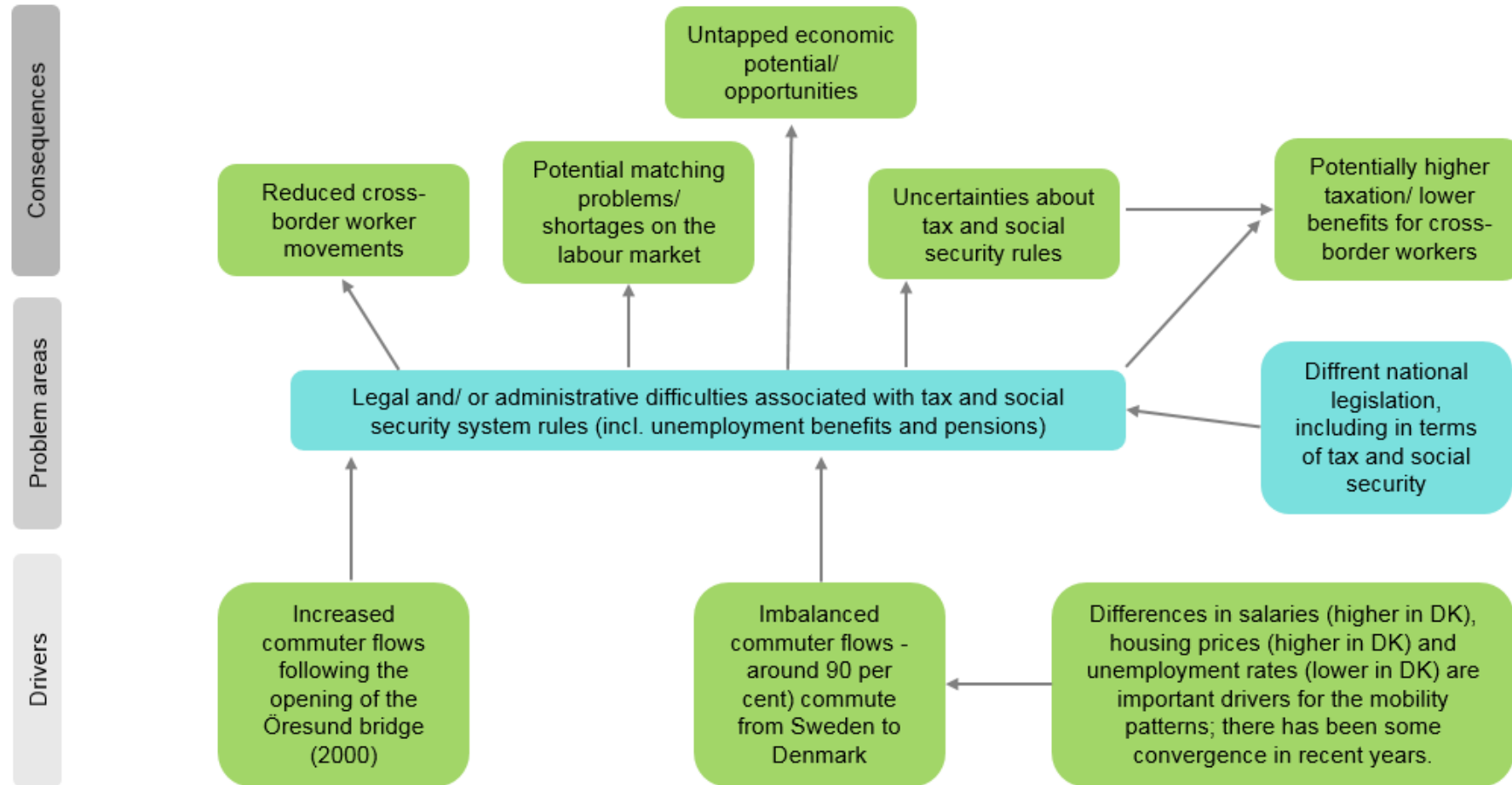
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Figure 2. Map of border regions indicating the level of cross-border commuting



Source: Association of Border Regions, 2012, Information services for cross-border workers in European border regions

Figure 3. Problem tree



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