



Regaining Control

Welfare State Strategies against Unwanted EU Law



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PhD Dissertation

Department of Political Science

University of Copenhagen

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Dedication

To Ebbe,
who came to life during this work

To my father,
who lost his

To Mathias,
who always keeps me happy, inspired and calm

Supervised by *professor Dorte Sindbjerg Martinsen*, University of Copenhagen

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Abstract

European integration is praised as a historic project, surmounting any comparable supranational equivalent in its substantial cooperation and aim of an ever closer Union. Legal constructs as the principle of equal treatment, free movement and the Union citizenship in particular stand out by their unparalleled ambitions. They, however, collide with the inherent logic in European welfare states of protecting national welfare, as seen in the rise in Euroscepticism and widespread politicisation of European free movement. This tension has motivated the dissertation to consider what might happen after Union rules, unwanted and politicised, are incorporated into national law across welfare Member States. Rich literature has already documented how Member States are strategic in the way they transpose EU law. A recent Practical Turn now focuses on the otherwise ignored dimension of what happens when EU law is implemented in the frontlines of European Member States. This literature shows that EU law is fragmented on the ground because of confusion or individual attitudes among frontline implementers. The direct link between politics and implementation, however, remains understudied in both EU implementation and national implementation literature. The dissertation contributes exactly here by asking how European welfare states respond to unwanted EU law in their policies and everyday practices. Hereby, it provides unique insight into the politics of ‘everyday Europe’.

Through novel deep multilevel engagement in both single case studies and comparative case design of Denmark, Sweden, the Netherlands, Austria and France, this research shows that national administrations strike the delicate balance of complying with EU law on paper but administer in a paradigm of control and restrict EU law as much as feasible in practice. Through both direct and indirect administrative strategies, Member States respond to European free movement via *politicised frontline restriction*, *quarantining* of Union citizens and ‘*strategic retrenchment*’ targeting Union citizens via language barriers, *decentralising legal uncertainty* to frontline implementers who are left without guidance on ambiguous and Court-driven EU law, and, lastly, exposing frontline levels to *political, administrative and judicial signalling*. Such strategic administration thus cleverly satisfies EU obligations on paper, yet serves national interests in practice. In consequence, national law regains primacy, discretion of street-level bureaucrats is restricted and mobile Europeans are placed in a situation of double vulnerability as their precarious position in the labour market results in vulnerable case handling in the social system. European welfare states hereby prove resilient despite many worried voices, but at the sacrifice of the law and the citizens it intended to protect. In result, Union citizen experience unequal access to equal treatment.

Resume (Dansk)

Europæisk integration lovprises som et historisk projekt, der med sit omfattende samarbejde på tværs af landegrænser og et ønske om en stadig tættere union overgår enhver anden overnational organisation. Især principperne om ligebehandling, fri bevægelighed og unionsborgerskabet skiller sig ud med sine usammenlignelige løfter om forandring. Samtidig udfordrer de samme principper dog den grundlæggende logik hos europæiske velfærdsstater om at værne om national velfærd, hvilket ses i den stigende EU-modstand og omfattende politisering af den fri bevægelighed i Europa. Den konflikt mellem europæiske ambitioner og nationale interesser har inspireret denne afhandling til at undersøge, hvad der sker med uønskede og politiserede EU-regler *efter*, de er inkorporeret i national lovgivning. Forskning har allerede dokumenteret, hvordan medlemsstater er strategiske, når de transponerer EU-lovgivning. Den seneste udvikling inden for forskningen – EU-implementeringslitteratur eller et '*Practical Turn*' – sætter nu fokus på den ellers oversete vinkel om medlemsstaters implementering af EU-ret i den yderste frontlinje. Denne gren af forskningen viser, at EU-retten fragmenteres i praksis på grund af uklarhed om reglerne eller personlige holdninger blandt frontlinjearbejdere. Den direkte forbindelse mellem politik og implementering er dog fortsat underbelyst både i den nye EU-implementeringslitteratur og national implementeringslitteratur. Afhandlingen bidrager netop her ved at spørge, hvordan europæiske velfærdsstater svarer på uønsket EU-ret i politikker og praksisser. Således byder den på unik indsigt i den politiske dimension af 'hverdags-Europa'.

Denne afhandling viser på baggrund af dybdegående både single og komparative casestudier med inddragelse af alle administrative niveauer i Danmark, Sverige, Nederlandene, Østrig og Frankrig, at nationale forvaltninger formår at ramme den svære balance mellem at efterleve EU-retten på papiret men administrere så restriktivt som muligt i praksis. Medlemsstater responderer på EUs fri bevægelighed i et nyt *kontrolparadigme* ved brug af både direkte og indirekte administrative strategier, der sikrer *stram politiseret praksis, karrantæne af EU-borgere* og '*strategisk tilbagetrækning*', som via sprogbarrierer alene rammer EU-borgere, ved at *decentralisere den juridiske uklarhed* til frontlinjearbejdere, som må administrere tvetydige og domstolsdrevne regler uden vejledning, og endelig ved at *signalere både politisk, administrativt og via domstolene* til frontlinjeaktører at man ønsker en stram praksis. Med en sådan strategisk forvaltning af reglerne formår medlemsstaterne at leve op til EU-retlige forpligtelser på papiret samtidig med at varetage nationale interesser i praksis. Konsekvenserne er, at national lovgivning de facto opnår forrang, frontlinjearbejdernes skøn indskrænkes og mobile EU-borgere ender i en situation af dobbelt-udsathed, da deres typisk prekære ansættelsesforhold resulterer i prekær sagsbehandling i de nationale social systemer. Europæiske velfærdsstater formår derfor at være modstandsdygtige over for det pres, der følger med EU-samarbejdet på trods af mange bange anelser, men på bekostning af loven og de borgere, som den var tiltænkt at beskytte. Som resultat bliver EU-borgere placeret i en situation af ulige adgang til ligebehandling.

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List of Figures and Tables

FIGURES

- Figure 1** EU Immigration from 2003 to 2017 in Denmark, Sweden, the Netherlands, Austria and France
- Figure 2** A Practice-Based Method to Study EU Implementation
- Figure 3** Control Measures across Member States used in Response to European Free Movement
- Figure 4** Practice Reponses to European Law

TABLES

- Table 1** Challenges Associated with Multilevel Implementation
- Table 2** Outline of the Papers in the Dissertation
- Table 3** Policy Responses and their Prevalence according to Content
- Table 4** Methods applied across Papers
- Table 5** Comparing Member States
- Table 6** Respondents (and Number of Interviews) across Member States, Administrative Levels and Social Provisions
- Table 7** Stages in the Interview Process
- Table 8** Qualitative Content Analysis: Focus of the Systematic Strategic Reading across Types of Documents

List of Abbreviations

CJEU	Court of Justice of the European Union
ECJ	European Court of Justice
EPSCO	Employment, Social Policy, Health and Consumer Affairs Council configuration
EU	European Union
NPM	New Public Management
MISSOC	Mutual Information System on Social Protection
SLB	Street-level bureaucrat
STAR	Styrelsen for Arbejdsmarked og Rekruttering

CONTENT

Dedication.....	2
Abstract.....	3
Resume (Dansk)	4
Acknowledgements	5
List of Figures and Tables	7
List of Abbreviations.....	8
Preface	16
Chapter 1 Introduction	17
Motivation.....	17
Puzzle and Research Question.....	18
Why is Implementing EU Law More Difficult?.....	23
Central Concepts.....	26
Transposition / Implementation / Compliance.....	26
Multilevel Implementation.....	28
Welfare State Resilience	28
Street-Level Bureaucrats	28
Politicisation.....	30
Outline of the Papers in the Dissertation	31
Outline of the Dissertation	35
Chapter 2 European Free Movement: Radical Changes in Turbulent Times	36
Waves of EU Migration	36
Expanding Rules of European Free Movement.....	39
Recent Developments: Welfare State Concerns	41
Chapter 3 Literature Review	44
Welfare States and European Integration: Clash or Compatibility?	44
European Integration through Judicial Law-Making.....	47
EU Compliance.....	51
EU Transposition and Europeanisation.....	51
A Practical Turn	57
How Can We Advance Studies of EU Implementation?	61
Integrated Implementation Model.....	61
Translation Theory	62

Recent Developments: a Human-Based Approach	67
Practice-Oriented Study of EU Implementation	69
Chapter 4 Methods: Practice-Oriented Study of EU Implementation	73
Case Design: Comparing Welfare States.....	77
Interviews and Interviewing	81
Coding: Politicisation	85
Content Analysis	86
Chapter 5 Contributions	89
Welfare State Responses to European free Movement.....	89
A Paradigm of Control	89
Practice Responses: Bureaucratic Compliance and Politicised Restriction	92
Quarantining and Strategic Retrenchment	94
Decentralising Legal Uncertainty.....	96
Consequences for the Protection of the Law	97
Primacy of National Law	98
Street-Level Bureaucrats in EU Implementation: From Policy-Makers to Policy-Takers	100
Double Vulnerability.....	101
Consequences for the Welfare State	102
The Downside of Welfare State Resilience.....	103
Chapter 6 Conclusion: Regaining Control at a High Cost.....	105
Research articles	111
Paper 1 Implementing Unwanted Law: When European Welfare States Link	
Politicisation and Implementation.....	113
Introduction.....	114
Bridging Insights on Implementation and EU Compliance.....	115
Analytical Framework and Methods.....	116
The Concept of ‘Worker’	119
Politicization of Free Movement	120
Practice Responses in Denmark.....	122
Social Assistance: Bureaucratic Compliance and Politicized Restriction	123
Study Grants: Bureaucratic Compliance and Politicized Restriction.....	124
Practice Responses in Sweden.....	125
Social Assistance: Bureaucratic Compliance.....	126