Does Free Movement of Services and Labor in the EU Threaten Coordinated Market Economies? Swedish Corporatism and the LAVAL Challenge

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Abstract

The present study addresses the issue of repercussions of enhanced competition from low wage highly mobile Eastern European labor forces on Swedish coordinated system of industrial relations. It discuses the fundamental differences between labor market organization in liberal (LME) and coordinated market economies (CME), addressing the puzzle of Swedish corporatism, which, unlike similar CMEs of Western Europe, stayed open and liberalism-embracing after 2004 EU enlargement. By using the LAVAL case as a symbolic precedent of industrial relation differences in EU, the analysis examines the ECJ ruling on the case and explores how Swedish actors (state, trade unions and business) adopted to the free market challenge. To do so, it uses content analysis to study scholarly debate on the issue and examines supplementary interviews conducted in the process of research The study concludes, that, while the ECJ clearly put national market values below free market principles, Swedish state and business showed substantial flexibility in adapting to post-LAVAL challenges. Trade unions, as shown in the example of Swedish-Latvian construction sector, remained critical towards any reforms, which limit their bargaining capacities and are not active in cross-border cooperation as a measure to prevent cheap labor flows to their market.

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Table of contents

Introduction

While the free movement of goods and services remains one of the main principles for single the European market, the process of border opening, as noted by multiple researchers, stimulated increased competition both within economic sectors and labor organization settings. The Eastern enlargement, which integrated less prosperous post-Communist societies into EU, also constitutes a threat for more developed European welfare states, which were now risking to be "dumped" by cheaper labor force and "welfare tourism". The overall composition of the EU, however, suggests, that the share of liberal market economies with less controlled labor flows is now getting higher as compared to coordinated system of industrial arrangements.

The following study addresses the issue of labor competition, which can be viewed as a direct consequence of Eastern enlargement and acceptation of new less wealthy member states. In broader terms, the competition can be described as a fundamental difference of labor organization and wage levels in "old" coordinated economies and "young" liberal Post-soviet societies, who started to enjoy the benefits of free market only in the last 10 years. The pre-enlargement (2004) period has clearly demonstrated, that the "old EU" states have different positions towards the perspective of opening their borders for foreign labor. While countries classified as "liberal market economies" (according to the literature on Varieties of Capitalism) (Hall and Soskice 2004, 7) such as United Kingdom or Ireland, have immediately demonstrated their readiness to support free movement of labor in the enlarged EU, so-called "coordinated market economies", such as Austria or Germany, remained cautious and prolonged their transition periods. This tendency, as a result, suggests the debate on possible dangers for the foundations of coordinated market economies.

Sweden presents an interesting case – while it can be clearly attributed to coordinated/corporatist countries, the country embraced the liberal market values brought by the enlargement and welcomed the increased labor mobility in the EU. As a consequence, it experienced outside pressures it was not used to. The 2004 LAVAL case has demonstrated its unpreparedness to face the challenges from liberalized free market and unrestricted labor mobility. Initially, it was a posted worker wage dispute between Latvian construction firm and Swedish trade union of construction workers (Byggnads), which demanded higher wages for Latvian labor force employed in Sweden. However, with LAVAL's sites being blocked by Byggnads in the result of collective action, the case quickly turned into a much broader dispute on non-discrimination of foreign service providers within the free EU market. The ECJ ruling, which was clearly pro-LAVAL, put the free market values above the national industrial arrangements. It also raised further questions of fundamental incompatibility between EU legislation on cross-border service provision and corporatist systems of industrial relations.

LAVAL precedent has served as an example of wage-dumping threat, coming from liberal Baltic market economies, which are in close proximity to Swedish labor market. Their loose labor arrangements can be explained with the concept of Baltic liberal market economy, which assumes that the region has experienced radical market liberalization incentives in the period of its transition. Latvian labor market, the origin of LAVAL case, is the most illustrative of the Baltic liberal setting – it features high levels of labor commodification, reliance on unskilled or "universally skilled labor", weak trade unions and the absence of centralized wage bargaining structures.

The following thesis seeks to explore whether the increasing competitive pressures from low wage and uncoordinated market economies endanger and undermine the effectiveness of Swedish coordinated system of industrial relations. Uncoordinated Latvian

labor, being in close proximity to Swedish market, thus possesses a major wage-dumping threat. The main research method is content analysis. Two interviews conducted in the framework of the analysis will be used as a supplementary data source, first representing the viewpoint of the major Swedish business representative, and second providing comments of Latvian trade union officials.

The research question of the thesis can be formulated as follows – "*What are the repercussions of enhanced competition from low wage Eastern European labor forces on Sweden's coordinated system of industrial relations*?"

The main hypothesis of the present thesis can be formulated as follows – "*Swedish system of coordinated industrial relations was forced to adjust to the increasing pressures of low wage labor due to its industrial relations being undermined by pro-liberal course taken by the ECJ.*"

The research argues that, as seen in LAVAL precedent, EU legislation on cross-border service provision is incompatible with traditional systems of industrial relations in coordinated market economies, which undermines their institutional differences on the basis of non-discrimination. It forces different types of domestic actors (government, trade unions, business) to adjust by giving up their domestic influence and/or loosening the domestic labor market arrangements in order to stay competitive. These patterns are demonstrated on the example of Swedish coordinated market economy and, particularly, its construction sector, which faced increasing outside pressures after 2004 EU enlargement.

The structure of the analysis can be described as follows:

Chapter 1: The challenges for coordinated European economies brought by free movement of labor and services.

1.1. Why is free movement of labor more challenging to CMEs rather than LMEs?

1.2. Protection mechanisms of coordinated European economies – German and Austrian transition periods

1.3. Swedish corporatism and free market

1.4. Swedish openness explained

1.5. Characteristics of CEE labor and Baltic LME

Chapter 2: LAVAL challenge for Swedish system of industrial relations

2.1. Posting of workers, service liberalization and the LAVAL case

2.2. ECJ ruling and new interpretation of the Posted Workers Directive

2.3. Challenges of LAVAL to the Swedish system of industrial relations

Chapter 3: Reactions to LAVAL challenges

3.1. State reaction to LAVAL challenge

3.2. Trade Union responses and cooperation incentives after LAVAL. Case of construction sector

3.3. Business response to LAVAL precedent

Chapter 4: Conclusion. Has the Swedish industrial relation system adapted to post-LAVAL challenges and does the free movement of goods and services undermine CME setting?

Chapter 1. The challenges for coordinated European economies brought by free movement of labor and services

The following chapter looks at the challenges for European coordinated market economies, which are brought by the expanding share of liberal market economies, especially after the 2004 enlargement. The sub-sections of the chapter will evaluate the potential risks of free market expansions both for LMEs and CMEs, examine labor market protection mechanisms imposed by coordinated market economies of the EU and, finally, present Swedish corporatism as a puzzling case of coordinated economy welcoming the free labor movement.

1.1. Why is free movement of labor more challenging to CMEs rather than LMEs?

The following sub-section will briefly introduce the concepts of coordinated market economy (CME) and liberal market economy (LME). It will thus elaborate on the reasons of free labor movement being potentially more dangerous for the coordinated market economy setting.

National economies differ in terms of market institutions and culture of their internal organization. While in ones firms rely on clearly defined legal system and complete contracting, others assign importance to culture of incomplete contracting and historical practices of industrial relations. These differences directly affect the order of labor organization within the national economies and determine the type of employer-labor relations.

According to Hall and Soskice, there are five major spheres of firm activity in the national economy. The way, how firms coordinate their activity in these spheres, usually

determine the model of labor market arrangements. These are: a) industrial relations, where companies/firms face the dilemma of how to coordinate employment and social conditions (i.e. wages, leaves, working hours) with labor force and labor representation bodies; b) vocational training and education, where firms provide their workers with necessary skill levels or workers decide how much they could invest in obtaining specific skills; c) corporate governance, which determines how firms secure funds from their investors and what returns are expected from them; d) inter-firm relations, where firms coordinate their interactions with core suppliers and other companies on the market with the main coordination challenge being addressed by the risks of joint venture exploitation; e) relations with firm's own employees, where the company must ensure the its labor force coordinates well with each other and has the skills/effort necessary to advance in firm's goals on the market (Hall and Soskice 2004, 7).

While the aforementioned coordination challenges are salient for all companies/firms in the national economy, the way of solving them differs. In the liberal market economy (to be discussed further within the concept of Baltic LME) firms are reported to coordinate their activities via the forms of formal contracting and competitive market arrangements. Companies are market price signal dependent and adjust their supply/demand according to the market preferences at a given moment. They function in a highly competitive environment and can try to increase competitiveness by limiting wages or other expenses (such as social expenses, if needed) (Hall and Soskice 2004, 8). LME typically has minimal wages and other minimal employment conditions straightforwardly set in law – firms are allowed to set custom wages for their employees as long as these comply with minimal standards.

Coordinated market economy (CME), on the other hand, features a completely different logic of arranging the employer-employee coordination, being mostly dependent on non-market relationships. These, as a result, are not fully market signal dependent, interacting

with non-market actors (sometimes referred to as "social partners"). This leads to relational or incomplete contracting with the focus on interaction and collaborative relationships instead of competitive ones (Hall and Soskice 2004, 8). CMEs typically employ high skilled labor with industry or even firm-specific skills, which, being achieved by extensive vocational training, gives sufficient guarantees for both sides involved – on the one hand, companies are assured in their training investments being effective, but on the other hand, employees are assured job security and can develop more specific firm-level skills. In order to remove the worker exploitation incentives, the framework of industrial relations is typically regulated by industry-level bargaining process between trade unions and employer associations, who negotiate and set the requirements for minimal wages as well as working and social conditions within the industry (Hall and Soskice 2004, 24). The mechanism, as a result, provides internal transparency for the national labor market both for employers with clear industry-specific arrangements to follow and employees with strong industry-specific trade unions behind their backs. One of the most distinctive features of the CME, as a result, is significantly less fluid labor market as compared to the LME setting, which gives the companies less opportunities to hire and fire labor, making them focus on long-term relationships and "narrow" firm-specific specialists (Hall and Soskice 2004, 30). LMEs, on the other hand, would invest mainly in generally skilled labor to rotate it easily and keep labor market fluid (to be discussed in the next chapter, in relation to Baltic welfare state concept).

Hall and Soskice qualify Sweden as a CME based on industrial coordination (as opposed to, for example, group-based coordination in Japan) (Hall and Soskice 2004, 34) with strong trade unions organized along sectorial lines. Since these bodies are independent from governmental influence, CMEs (and Swedish CME, in particular), do not have law regulated wage "bottom" and minimal social standards – the ones to be followed are the ones agreed during the industry-level bargaining between trade unions and employer association

(Employer Federation, in Swedish case) (Hall and Soskice 2004, 47). What follows is, indeed, a big share of reliance on tradition of bargaining as such, which makes the system work even without strict law regulations being in place.

With the liberal and coordinated concepts of industrial relations being briefly introduced, it is clear that the actors under the LME follow the classic demand-driven market logic. High labor fluidity, investment in general skills and only minimal working standards set in law, in this case, contribute to constant labor rotation between the companies, often in search for better working conditions. CMEs, on the other hand, opt for stability, industry-level bargaining and long-term employment, investing in high-skilled and industry-specific labor force.

The challenge to the CMEs, brought by free movement of labor and services, can be first put in a wider context of sustainability of coordinated industrial relations under the globalization pressures. Hoffmann (2004, 9), for instance, recalls M. Albert's book "Capitalisme contre Capitalisme", which was among the first to put the sustainability of CME under question due to increasing globalization incentives. While the author admits CMEs being more successful in terms of social provision, he claims them to be "sclerotic" and lacking flexibility to compete with pure market based LME capitalisms. When the markets and capital are being internationalized, LMEs and their enterprises enjoy far greater flexibility in terms of production relocation and outsourcing, while CMEs are constrained with national arrangements and are often too unprepared to face foreign competitions in certain sectors of production (Hoffmann 2004, 9). This, together with the CME countries being outnumbered by LMEs, can lead to the deregulation incentives and CMEs with them being forced to give up certain domestic arrangements for the sake of remaining competitive.

While Hall and Soskice also acknowledge the issue of globalization and claim, that the reactions of firms to different challenges will be inherently different and dependent on an

industrial setting, they tend to "justify" local firms. These, as claimed, are not expected to give up domestic coordinated arrangements that easily just because of cheaper labor availability due to existing institutions strengthening their comparative advantages. Firms, as a result, cannot abandon them easily (Hall and Soskice 2004, 57). It must be, however, added, that due to reliance on high-skilled labor, these domestic enterprises would, in any case, experience severe limitations in production relocation – desired high-skilled labor is not internationally available and cheaper than the domestic one. Given that the nature of international competition is no longer complementary (i.e. multiple actors can compete and still profit), but substitutive (weaker companies/products fall out), CME companies can no longer compete on quality alone, being forced to implement competitive price policies (Hoffmann 2004, 11)

The EU-wide market liberalization incentives, in this case, are adjusted "to the lowest common denominator", which is market freedom under minimal standards, clearly favoring the LME setting (Hoffmann 2004, 13). Höpner and Schäfer (2007, 8) also indicate, that the EU is clearly moving towards the Anglo-Saxon model of industrial relations (LME) and market success alone is no longer a judge between different varieties of capitalism (Höpner and Schäfer 2007, 8). Removing any national barriers, which restrict fair and even competition in the common market, done under the label of "non-discrimination", has become one of the priorities in the EU market policies. LMEs and CMEs, however, are not equal/comparable production regimes and, as authors note, this is the case of institutional differences becoming major obstacles for competition (Höpner and Schäfer 2007, 8). Hall and Soskice are addressing the similar pattern – in LMEs business interests would force the institutions/governments to deregulate and give up their control of market levers since the competitiveness of the whole economy rests on market mechanisms. CMEs, on the other hand, would be reluctant to do so since the deregulation and "de-institutionalization" would

threaten their inherited comparative institutional advantages (Hall and Soskice 2004, 58-59). These advantages, consequently, risk to be labeled as "discriminative". The delegation of decision-making to supra-national institutions such as ECJ, initially aimed at reducing the transaction costs and ensuring the absence of opportunistic behavior between member states (Höpner and Schäfer 2007, 9), can present an additional challenge for coordinated economies - while treating market freedom as a "common denominator", ECJ is likely to frame its decisions accordingly. As a result, supporting the market forces is likely to happen at the expense of national political/institutional specifics with some (LMEs) benefiting from deregulation, but others (CMEs) facing the erosion of the "internal logic their production regimes rely on" (Höpner and Schäfer 2007, 22). The risks for the European CMEs are, therefore, evident – the logic of EU market integration is built on universal deregulation and leading all national economies to a common denominator without acknowledging the need to shelter coordinated production regimes, which risk to lose their composition logic.

Baccaro and Howell (2011, 525) adopt a similar argument by using an assumption by Streeck and Thelen, which argues for countries being reluctant to modify the existing institutions and preferring to defend the existing arrangements (Baccaro and Howell 2011, 525). Institutional change, however, is claimed inevitable for capitalist development and common trajectories towards institutional change can be already identified. In other words, while the world economy still consists of both coordinated and liberal state actors, the common neoliberal direction of development is in place (Baccaro and Howell 2011, 526). The neoliberal direction, in this case, can be characterized by the movement towards dispersed competition, individual market action instead of collective decision-making and macroeconomic reforms, such as financial and market liberalization and governments cancelling full employment strategies (Baccaro and Howell 2011, 526).

While such kinds of developments are clearly LME-favorable, CMEs would face significant changes in their internal organization logic, such as reduction of unemployment benefits (due to restructured labor market institutions), lower employment protection, low workplace-level collective arrangements (instead of higher industry-level bargaining) and market (including labor rotation) being fully driven by supply/demand forces (Baccaro and Howell 2011, 527). The second scenario, mentioned by *B&H*, is the change in institutional roles – as it is indicated in the Works Council example, these might turn from being trade union workplace agents to actors which encourage cooperation with the employer and firm identification (Baccaro and Howell 2011, 527) In both, the initial foundations of CME are either gone due to market liberalization incentives or re-shaped while the abilities of employers are clearly increasing as compared to shrinking labor force representation capacities. As we have already seen in the argument of Hoffman and Hall and Soskice, employers might or might not use these increased abilities to manipulate labor conditions or engage in cost-decreasing relocation of production. The risks for the CMEs, however, still persist and scholars tend to agree on common neoliberal trajectory being present on the agenda of globalized market (including EU) liberalization.

With the CME weaknesses when facing market liberalization being defined, the discussion must be further narrowed to threat mitigation practices. The experience of European CMEs in addressing the challenges of enlargement speaks for the transition periods being the most evident measure to protect domestic markets from immediate labor migration.

1.2. Protection mechanisms of coordinated European economies – German and Austrian transition periods

On the onset of the 2004 enlargement, "old-EU" member states clearly expressed concerns about the perspective of increasing labor mobility after the accession of EU8. The

examples of Germany and Austria can be briefly presented in order to contrast an unusually liberalism-embracing Swedish coordinated system of welfare provision to more traditional coordinated market economies. As noted by Brenke, Yuksel and Zimmermann (2009, 2), both Germany and Austria present cases of the "old EU-15" member states, which did not significantly relax restrictions on migrants (meaning, primarily, labor migration) after the enlargement of 2004 (Brenke, Yuksel and Zimmermann 2009, 2) (Malta was also given the possibility to invoke restrictions if facing substantial labor migration). These were legally removed only in 2011, after the end of the official transition period. The main reason for introduction of the transition periods was, therefore, the mitigation of potential free market repercussions – substantial inflow of unskilled labor, which would endanger domestic wage levels, achieved in the process of industry bargaining.

Germany can be named one of the most cited examples of CME in the literature, representing a model, which was expected to make extremely cautious steps (if any) towards liberalization. By looking closer at the German case, authors note, that self-employed workers from EU8 were allowed to settle in Germany under the restrictions of employing personnel from their home country. The restrictions were also not applied to students and seasonal workers on short-term contracts. The reasons for being restrictive and denying most of the applications from third country nationals were the risks of cheaper non-unionized labor force stimulating a "race to the bottom" and dumping local industrial arrangements (Brenke, Yuksel and Zimmermann 2009, 3). This would put an additional burden on the welfare state. We can, therefore, observe, that the fears of enlargement were mostly shared among the economies with coordinated market arrangements and concentrated around the risks of stimulating wage decrease and endangering rights and opportunities for local labor. Foreign businesses were allowed, but only with "key personnel" being recruited from abroad (managers and other skills essential for business coordination). Manual labor was allowed to

be recruited only from the local labor market (Brenke, Yuksel and Zimmermann 2009, 3). There were also exceptions for especially high skilled specialists (i.e. IT), but in very low numbers and with high minimal salary contracts.

The labor immigration flows, however, still experienced an increased after the accession of the EU8. The data presented by authors suggests that the inflow of EU8 immigrants is 2,5 bigger in the next four years after the enlargement (with Poland being responsible for at least 70%). Employment is named as the major reason for migration with the incomes of immigrants still being approximately 25% lower than the native population. It is, to some extent, a sign that social dumping might take place in the certain scale. Since the self-employed personnel was allowed, it occupied low-wage jobs, earning around 65% of German average (Elsner and Zimmermann 2013, 9). After 2004, migrants have also become older and less educated, which is primarily a sign of them joining manual generally skilled labor force and not occupying educationally demanding positions (Elsner and Zimmermann 2013, 16-17). After 2008, however, the skill composition of incoming labor force (those who were allowed) is reported to be similar to local German one.

We can also compare these findings to the Swedish labor market migrant skill composition data – as argued by Kahanec and Zimmermann (2009, 52), skill structure of migrants to Sweden is relatively similar to the one in both sending in receiving countries, which means that skill composition is not that much affected by migration (Kahanec and Zimmermann 2009, 52). It would, therefore, mean, that immigrants possess a clear threat in terms of stimulating the race to the bottom in wages in the receiving countries. The researchers, however, state that according to the occupational structure of employment immigrants are often employed below their skill levels and using only basic knowledge in their labor (Kahanec and Zimmermann 2009, 52). It can be seen, that even featuring quite high (on average) education levels, migrants are likely to compete with natives in the low

skill segments, not threatening the positions of high-skilled labor. Given the high educational levels of migrants, the argument of Marginson (2006, 6) may sound appropriate as well – he argues, that these are not the labor costs alone which attract the producers, but the combination of costs, productivity, flexibility and quality (Marginson 2006, 6). These cross-border comparisons by the domestic employers/producers are the ones exercising primary pressure on the local workforces, forcing them to engage in cost reducing of flexibility concessions. This comparison suggests, that in terms of incoming skill and employment patterns in Germany and Sweden, both coordinated economies are roughly similar. The degree of substitutability between natives and immigrants is also imperfect in both cases. The difference lies in their openness towards migration (to be discussed later on).

Along with Germany, Austrian state also experienced higher labor inflows after the enlargement, even with market protection measures being in place. Kahanec and Zimmerman (2009, 21) note, that Austria, alongside with Denmark, Finland and France, can be included in the group of countries, where the rate of welfare use is significantly higher among immigrants than natives (Kahanec and Zimmermann 2009, 21). This can be claimed the major reason for national government, similarly to German case, being cautious towards openness. It is also among the ones adopting a closed-door policy (as contrasted to Swedish open-door stance) towards incoming labor, which, according to statistics, often had a temporary wealth-seeking character. The migrant skill composition, in this case, can be claimed similar to Germany, which experienced shortages of high-skilled labor and excess of less educated workforce.

The effectiveness of transition periods is debatable. German example is the one to take a closer look at. Changes in German immigration data suggest that long transition period has contributed to the "forbidden fruit" image of the country, meaning big increases in labor migration immediately after barrier removals. The period of 2004 – 2010 clearly demonstrates low migration balance (difference between arrivals and departures). The year 2008 can be

claimed the most dramatic in terms of negative migration balance (-55,743 people). The changes after 2010, however, suggest for sudden immigration boosts – while the 2010 migration balance was equal to 127,677 people, the year 2011 demonstrates a significant increase number of arrivals (roughly 160,000 more incoming people, departures same as 2010) with the migration balance being equal to 279,330 people. The balance data continued to skyrocket after 2011 onwards, demonstrating a gain of 368,945 people in 2012 and 437,303 newcomers in 2013.[1] The pattern, seen in the migration data, is straightforward – transition period did shelter Germany from the dramatic inflow of migrants immediately after 2004 enlargement, but made it uneven. After the barrier removal the country (and its labor market, in particular) was immediately put under stress due to record-braking immigration numbers (in 1991-2013 period). It can be argued that with no restriction applied the distribution of incoming labor force would be more even, happening without stressful conditions for domestic market actors.

1.3. Swedish corporatism and free market

Swedish corporatism can be claimed different it terms of level of its liberalization and readiness to open labor markets immediately after the EU expansion in 2004 (as compared to other CME states, such as Germany or Austria). We can thus contrast Swedish openness to relative "labor suspiciousness" of other CMEs and discuss the challenges for Swedish corporatism, brought by EU's expansion in 2004.

Swedish openness is, indeed, a certain paradox. Its system of industrial relations is among the most coordinated in the capitalist world. It can be described as a system of institutional arrangements, where economic decisions are reached through the dialogue between employers and peak-level representatives of employees, being often based on the

[1] *Migration between Germany and foreign countries 1991 to 2013*, via: DeStatis Statistisches Bundesamt, available at: https://www.destatis.de/EN/FactsFigures/SocietyState/Population/Migration/Tables/MigrationTotal.html

"ideology of social partnership" as described by Katzenstein (Lindvall and Sebring 2005, 1059-1060). Corporatism thus is an associative/collective action, class organization of labor and capital, as opposed to individual market actions in liberal economies. In order to emerge, it often requires certain historical, legal and cultural traditions, like we observe in Nordic or Germanic labor movements (Pekkarinen, Pohjola and Rowthorn 1992, 2). A lot of achievements in terms of wage negotiation, social guarantees and other internal arrangements are, therefore, solely dependent on successful cooperation between social partners. If their capacities are, for some reason, limited or compromised, the labor market adjustment mechanisms will be the ones failing.

Swedish labor market can be clearly contrasted to the "rest of EU" labor arrangements due to effectively utilizing its insitutional differences. Ankarloo (2009, 2) for example, notes that the expert evaluation of the Swedish model had always been uneven, being claimed both the prime example of a successful welfare management model and a socialist "nanny state". It was, however, by no means acknowledged as unique, which was both beneficial and growth limiting in terms of potential reforms that can be implemented (Ankarloo 2009, 2). The following features can be claimed illustrative of the Swedish welfare state, which encompasses both liberal market policy and strict coordinated social arrangements:

- Social services, which are centralized and fully tax-funded. Such kind of organization ensures equal development of regions, distributes social services on the basis of need and generally acts as a community-building factor (Ankarloo 2009, 4).
- State-controlled system of compulsory social payments, which is tightly connected with a so-called "work-line" work ethic – a principle of being constantly present in the labor market. It encourages the individuals, even currently unemployed, to be re-trained and thrown into the labor market – social payment system, in this case,

guarantees that their social guarantees will be in place even when changing the workplace (Ankarloo 2009, 5).

- "Marginal welfare" system, which provides additional support for the individuals living below the basic/ minimal income levels. This feature of Swedish welfare state, has, indeed, raised numerous debates on the problem of free-riding from the side of "welfare immigrants", which are using it as a mean to cover their basic needs at the expense of the state (Ankarloo 2009, 7).

While the abovementioned features clearly speak for stability of the Swedish labor market and ensured social guarantees, the corporatist system can be criticized due to its growth limitations. Swedish system has become absolutely state dependent, especially considering high tax rates and unemployed being solely state dependent. It is argued, that Sweden is in an urgent need to shrink the size of state, completely open its labor markets and lower the taxes (naming the examples of UK, Netherlands or Ireland) as there is currently no room for market self-sufficiency enhancement reforms, the system has become increasingly "path dependent" and too "sticky" to change (Ankarloo 2009, 8). As a result, it is not only the matter of welfare tourism or "free riding", which Ankarloo mentioned when describing the "marginal welfare concept", but the issue of having a closed labor ecosystem in the middle of free labor flows. This, as a result, might serve as an additional incentive for Sweden to liberalize its labor market.

Originally aimed at ensuring maximally low levels of unemployment, Swedish "active labor market" policies are also the results of corporatism. These were primarily set to ensure a smooth transfer for the laid-off workers to new places of employment, not providing benefits for the unemployed. Forslund and Krueger (2010, 271-274) distinguish between the following historical and well-embedded components of Swedish active labor market policy:

- Unemployment insurance, where the unemployment compensation is provided either from trade union-run and tax financed funds, or supplementary compensation system, designed for new labor market entrants;
- Measures to create employment, which includes granting the rights for a relief job for specialists, who ran out of their unemployment compensation as well as self-employment grants, work experience schemes, traineeships and others.
- Mobility enhancement measures, which include retraining or fostering employment in various regions;
- Measures, aimed at enhancing the entrepreneurial activity in the country, which is partially done by granting generous unemployment benefits and loans from the government n order to facilitate new business creation.
- Measures, targeted at supporting handicapped persons (Forslund and Krueger 2010, 271-274).

Calmfors, Forslund and Hemstrom (2002, 7) also note, that Swedish active labor market policy was always aimed at mitigating "moral hazard problems of a generous unemployment insurance" (Calmfors, Forslund and Hemsrom 2002, 7) aiming at fostering employment without endlessly multiplying the number of unemployment protection recipients. Historical labor market spending data (presented as percentage of overall GDP) suggest, that Sweden, as compared to Germany and Austria (being representative of similar CME settings) was spending 1,14% on its active labor market policies in the period of 1996-1999 (as compared to Germany – 1,04%, Austria – 0,36%) (Calmfors, Forslund and Hemstrom 2002, 13). As a result, the track of historical expenditure for labor market policies clearly suggest Swedish model as the most "generous", as compared to similar European systems.

Essentially, all four abovementioned components of Swedish coordinated labor market (low unemployment, low inflation, income distribution and high growth) are included in a so-called Rehn-Meidner model, the major ideas of which are still central for Swedish market organization (Calmfors, Forslund and Hemstrom 2002, 2). The main guiding principle of the model can be summarized as follows – the model assumed clear division of roles within the internal market, where state/government was primarily responsible for getting unemployed back to the labor market via its fiscal, monetary and labor market policies, but social partners primarily focusing on centralized wage negotiation and wage-setting activities (Calmfors, Forslund and Hemstrom 2002, 1-2). The model, as a result, was initially aimed at pushing weak firms from the market (done by restrictive governmental policies), generating short-term unemployment and then channeling unemployed back to work. Together with high unemployment benefits, this logic protected income levels rather than jobs as such (Calmfors, Forslund and Hemstrom 2002, 2) with collective trade union agreements being central. The initial Rehn-Meidner logic was, of course, adjusted according to the actual economic situation, which can be observed in the Industrial Agreement of 1997, which decentralized wage-setting and left only general framework agreements centralized (Calmfors, Forslund and Hemstrom 2002, 2-3). Very few areas, however, remain regulated directly by law – all agreements are mostly products of bargaining and negotiation, which leaves Swedish system self-sustainable, but rather closed and unable to cope with outside liberalizing and social dumping pressures effectively. As it was already noted, it is all about the capacities of "social partners" to cooperate. No strict legal norms are in place to set the minimal standards of wage and social guarantees with all major agreements being voluntary.

The after 2004 enlargement data, suggests, that by the year 2005 income equality index (GINI) in Sweden was still 23 as compared to less equal EU average of 30. Same pattern can be observed in other statistical data – 73,6% in Sweden as compared to 65,9% EU

average in employment rate and 7,8% of Swedish unemployment rate as compared to 8,6% in EU (Marginson 2006, 3). As Fischer notes (2006, 1), sustaining the wage level is, arguably, not a major issue to solve in terms of outside pressures to the Swedish market. The general question of job availability is more important when it comes to the debate on social dumping. In other words, job losses are considered to be the main threat.

Given the Swedish setting of coordinated industrial relations (focus at achieving low unemployment, low inflation, high economic growth and equitable distribution of income), foreign actors might bring underbidding to the market (Fischer 2006, 1). While being open to market liberalization initiatives coming from the EU and generally embracing free market values, Swedish model still manages to achieve relative income security, putting much emphasis on high social added value in its labor market policies and importance of collective agreements as a major feature of the system. The issue of outside pressures, as a result, is evident. While Swedish governmental and social actors were positive towards opening the service markets and letting the foreign labor in, they had concerns about underbidding taking place in labor market (Fischer 2006, 3). Multiple precedents of such kind can be named – for instance, construction sector case of Latvian firm LAVAL (to be discussed further in the analysis) and medical service industry case of dental services being provided by Polish dentists in Scandinavian market at a significantly lower price.

Moreover, the general willingness of employers to sustain labor-intensive production in Sweden is also under question – production outsourcing has become an effective measure to cut down labor costs. It is, consequently, reasonable to assume that foreign labor might be potentially profitable for Swedish employers as a half-measure between being forced to pay higher wages to local workers and compete outsourcing of their labor-intensive production. Relative cautiousness, therefore, remains one of the distinct features of Swedish labor market

– cautious wage increases (as a main measure of sustaining competitiveness) are outweighed by job security levels, which are significantly higher than EU averages.

In overall, however, Swedish cannot be put in line with Germany and Austria in terms of its position towards enlargement and acquisition of new member states. It is thus a phenomenon of corporatism welcoming the liberalization and the expansion of Europe.

1.4. Swedish openness explained

Why is Swedish corporatism favoring free market arrangements? As previously mentioned arguments suggest, Swedish labor market policies are limited in their flexibility due to limited number of reforms being possible to implement. Previous parts of the analysis have indicated that Sweden possesses its own institutional ways of dealing with restructuring by safeguarding its system of corporatist arrangements, even given the neoliberal path the EU has chosen. These, however, need further evaluation.

Nima Sanandaji notes, that one of the major features, which makes the Swedish system different from the rest of the EU, is the presence of high levels of trust, individual responsibility and work ethics – it is a working environment, where culture and strong social norms matter (Sanandaji 2012, 5-6). However, if we evaluate the performance of foreign labor force in the Swedish labor market, the process of "welcoming" it can be claimed uneven. If by the year 1978 foreign-born residents had and only 7% lower employment rate than Swedes, by 1995 the gap expanded to 52% (Sanandaji 2012, 27). The before-2004 Enlargement data suggests, that this number was only insignificantly reduced to 48%, which left many labor migrants trapped in the Swedish labor market and dependent on governmental unemployment handouts (Sanandaji 2012, 27). As the 2004 EU expansion was assuming even bigger liberalization and openness of domestic markets, the risks of attracting welfare-seekers became more salient. The additional clause in Accession Treaty, accepted in 2003, granted the "old EU" an opportunity to limit labor flow to domestic markets till 2011 (as it was done, for

instance, in Germany). However, as Aslund and Engdahl (2013, 6) note, Sweden was unable to impose any additional market restrictions already due to being one of the active enlargement promoters (Aslund and Engdahl 2013, 6).

While agreeing on the complications the foreign labor might face in the Swedish market when willing to join it "officially", Jonas Mansson (2008) presents a different approach, claiming that incoming labor flows are needed to stimulate the economy and Sweden actually needs labor migrants. In the other words, the ideal case scenario for Swedish labor market is reaching a "golden middle" in terms of incoming CEE labor force (Månsson 2008, 2). To do so, positive attitude towards migrants is the main migration "pull factor", which determines the country of choice for the third country nationals. Mannson's research, which examines Swedish market openness directly in relation to Baltic and Polish labor, deserves further attention.

The author's argument focuses directly on openness as societal ability to integrate immigrants, which includes policies, traditions and attitudes in the country as such. As the research concludes, the fact of interaction with immigrants plays a crucial role in societal acceptance of foreign labor force in Sweden (Månsson 2008, 16-17). In the other words, the denial of incoming workers by the local labor force is the result of either weak socialization of newcomers or inappropriate behavior of their employers. The second explanation seems valid especially in the context of LAVAL – it assumes, that there is no hatred towards the workers per se, only irresponsible employers. Additional assumptions can be also mentioned in light of our previous discussion on typical migrant skill composition in European corporatist states – it is possible to state that Sweden would clearly benefit from educated high-skilled labor force, which would be ready to follow domestic industrial arrangements and join the unions. Market openness is, in this case, profitable.

The additional supplementary argument justifying the Swedish openness can be extracted from the interview with G. Hedlund, head of major Swedish construction and forestry consortium in Latvia, conducted in the process of the research. He states, that Sweden has "*always embraced the international free trade due to having quite developed industrial capacities, such as wood, metal, cellulose, industrial equipment/machines and others. We have used the international market opportunities to export these very widely and acknowledged that we have a lot to gain from it. That is why we are traditionally welcoming towards free market principles, and even if sometimes we lose from it, the overall end gains are always higher than losses. We all know, that the smaller the country, the bigger the benefits from the openness of markets. You can only erect additional taxation or customs barriers when you are a huge state with ambitions of fully regulated internal market. We think, that a country like Sweden will always win if allowed to trade its goods and services freely*."[2] In addition to traditional openness that is linked to the small size of the country, it seems that additional argument in favor of free movement of labor is linked to the interests of the Swedish defense industry – Swedish defense policy is also reported to gain benefits from "accepting" Baltic states and "having them on our side."[3] Together with strong democratic principles, the mentioned arguments provide the additional explanation for initial Swedish openness, even while having a different system of industrial arrangements. The Rehn-Meidner model, which was already previously discussed, also contributed to Swedish openness as it was initially aimed at modernization, restructuring the economy and stimulating less performing firms for productivity increases. The result of these measures was growth, which also contributed to export-orientation.

However, in anticipation of eastern enlargement, the Swedish social democratic government had discussed to limit free movement of labor. In 2004, a Committee for Labor

[2] George Hedlund, interview by Sergey Jakimov, Riga, Latvia, May 15 2014, see Appendix 2
[3] see Appendix 2

Migration (KAKI) was created (initiated by social democratic Prime Minister Göran Persson). Its primary function was to list possible labor migration control mechanisms in order to cope with incoming workforce from new member states. While the initial plan of imposing a one-year transition period was initially supported by the ruling party, it did not pass the parliament. This led to an unusual case – corporatist Sweden ended up with no additional transition regulations erected, being together UK and Ireland, both LMEs. This outcome, as a result, was reported to contribute to more positive attitude towards labor migration in Swedish society (Quirico 2012, 11-12).

The previous subsection has introduced the debate on labor market liberalization in Sweden and presented the main reasons for it to embrace free movement values. Because of these reasons, Swedish CME ended up with the same labor market policy as LMEs, which, as we have demonstrated, have much less to fear form labor market opening.

1.5. Characteristics of CEE labor and Baltic LME

The previous subsections have introduced Swedish corporatist model of industrial relations, its attitudes towards immigration and attempted to explain a puzzle of corporatist country remaining open for free market values. The main challenge for the Swedish labor market thus comes from the liberal and unregulated labor from Central and Eastern Europe, which has different patterns of competition. Moreover, given the closeness of Baltic countries, Sweden has a pure LME example at its border. The following subsection will, therefore, introduce the reader to the roots of CEE union weaknesses, list the major reasons of labor remaining highly mobile and define the distinctive features of Baltic liberal market economy.

The discussion on Central and Eastern European labor mobility patterns must be, to a large extent, connected with the specifics of CEE trade union development and initiated by the argument of Heribert Kohl (2008). He states, that after the regime change/transformation,

CEE trade unions and labor have experienced an unprecedented pressure to "adapt and innovate" (Kohl 2008, 7). In essence, it was a shift from the compulsory membership structures to voluntary associations of employees – trade unions were now forced to change their focus from being the regime agents, concentrated mainly on social matters. Now, they were expected to be independent pro-active employee-representative bodies, directly responsible for job security (something, which socialist heritage did not account for) (Kohl 2008, 108).

The course of trade union transformation, however, is described as different and dependent on the course of national level transformation, which produced different outcomes throughout CEE (for example, Slovenia, where TU presence is successfully maintained, and Latvia, where TU membership was declining) (Kohl 2008, 109-110). In overall though, Kohl emphasizes on three features of new industrial relations, which came about after the transformation: (1) the state plays a dominant role in determining the minimum wage levels and general working conditions, leading in any tripartite negotiations on economic and social policies (even after the EU accession); (2) bargaining policy is ineffective due to non-existent or weak sectorial negotiating structures and company agreements are taking the leading role, and (3) small and medium size enterprises (SME's) - small service-providing business structures – are dominating the market and often operating in non-unionized sectors, making the collective bargaining and effective union activity almost impossible with Western-style works councils being not present as well (Kohl 2008, 110-111) (i.e. Eastern European trade unions have mostly adhered to the tradition of shop-floor representation) (Kohl 2008, 116). In state owned enterprises or in the areas where state acts as a main employer (i.e. healthcare), the effective union activity may be possible. Central and Eastern Europe, however, generally lacks practices of bilaterally negotiated and generally binding sectorial agreements (excluding Slovenia and Romania) (Kohl 2008, 117-119).

CEE trade unions can be thus characterized by facing "liberalization dilemma" (Kohl 2008, 122) and having limited bargaining capacity, workers' attraction potential and low effectiveness in workplace representation. The labor, lacking backup from the unions, has become mobile and constantly searching for better employment conditions. This, as a result, created highly fluid and competitive national labor markets.

Stephen Crowley (2004) presents a somewhat similar, but structurally different insight in the structural causes of CEE trade union weaknesses. The concept, which was omitted by Kohl but is given attention in Crowley's analysis, is the possibility of "exit" by workers from CEE, which serves as one of the possible sources of labor weakness. Crowley is using this concept of A. Hirschman and, referring to Greskovits, inquires whether the individual exit to informal economy could be viewed as a response to the economic stress in the East (Crowley 2004, 415). The argument, however, remains somehow questioned – while the informal economy data is incomplete, the relevance of exit as a reason for labor being silently ineffective remains undecided. We can, however, account for such possibility. Moreover, with the exit options (and, sometimes, incentives) being in place, the labor is expected to welcome new mobility possibilities and newly open labor markets. Nothing is constraining it from relocating.

Weak employers' representation is also stated as one of the reasons for initially limited CEE trade union activity. The reason of employers being slower in articulating their interests was, indeed, the presence of choice between the social dialogue (which involved cooperation with trade unions) and methods like lobbying (Dimitrova and Vilrokx 2005, 27). The problem is challenging due to internal employer heterogeneity – conditions of ownership, capital nationality, size of company and functions leave the employers strongly fragmented (Dimitrova and Vilrokx 2005, 27). The result is the difference in employers' interests, which leads to hesitation and unwillingness to engage in the process of collective bargaining

Anna Pollert (1999) presents another complimentary insight by raising the issue of labor making its way into shadow economy and self-employment (Pollert 1999, 209-210). She also notes the significant expansion of the "target audience" of trade unions after the transition, which they were not totally ready to address – now they became the representing agents not only for active employees, but also for unemployed and pensioners (Pollert 1999, 212) The decreasing "traditionality", addressed by Pollert, can be also noticed in the studies concentrating on industrial relations in "new" after-enlargement Europe. The accent is being put on labor involvement in so-called "atypical" employment forms – self-employment, employment through intermediate agencies and fixed-term contracts (Leisink, Steijn and Veersma 2007, 42). Such developments clearly contribute to the decrease in trade union power – self-employment is viewed primarily as an additional source of flexibility for the employers, who are unwilling to participate in labor negotiations, regulations or social contributions (Leisink, Steijn and Veersma 2007, 44). What is more worrying, Poland and Baltic countries are stated as leaders in adoption of such "alternative" employment, which involves self-employment, double contracts (where the employee receives a normal labor contract together with a self-employee's one) or "extra agreements" (Leisink, Steijn and Veersma 2007, 44-45). Given a significant proportion of labor being "unofficially" employed in the new EU, employers tend to report having a big amount of minimal wage receivers in order to avoid additional taxes and social payments – the rest of the payment happens "under the table" (Leisink, Steijn and Veersma 2007, 49).

The fear of losing a job, not being backed-up by any structures, leads to other distinct feature of low-unionized CEE liberal economies - high level of labor commodification (is also of specific interest for the Baltic labor market). Esping-Andersen (1990) argues, that commodification occurs when worker's survival on the market is contingent upon the sale of their labor power, meaning that a person cannot maintain the appropriate level of life without

reliance on the market (Esping-Andersen 1990, 22). He notes, that when workers present a commodity and are completely market-dependent, the mobilization of the labor force under the aim of common solidarity action becomes largely problematic. The employer, in this case, possesses an absolute authority over the labor force (Esping-Andersen 1990, 22).

With the discussion being narrowed down to the trade union capacities in the Baltic area, Charles Woolfson can be mentioned as the researcher, concentrating on the topic of Baltic labor standards. He notes, that Baltic states suffer from significant numbers of labor force falling under any thresholds of collective bargaining and protection by being employed in a "shadow" or "grey" sectors of economy, being bound by semi-legal contracts and arrangements (Woolfson 2007, 201). Employment conditions in Baltic states are described by Woolfson as "deteriorated", while he uses the term "downgraded labor", which has come as a result of market liberalization policies and increased workforce compliance, to describe the downgrade of employment standards (such as part-time contracts, absence of the written arrangements/guarantees, under-the-table wage payments, etc.) to foster more business-friendly environment in the area (Woolfson 2007, 202). Latvia, in this case, is mentioned as a clear "worst case" example of the aforementioned tendencies. This is being supplemented by the argument by Bohle and Greskovits, who confirm, that the most perspective actors were the first to exit Baltic human capital base when seeing the signs of organizational decline, leaving them Baltics with low-skilled, low-paid labor and low added value export strategies (Cerami and Vanhuysse 2009, 63). We do, therefore, see multiple obstacles, which prevented Baltic States to develop into CMEs, both of inherited and structural nature.

Another researcher, focusing primarily on Baltic area and clearly addressing the problem of trade union weakness, is Jolanta Aidukaite. Her argument is clearly complementing the already mentioned body of research, claiming that Baltic countries already had a specific heritage based on Soviet type of welfare state, referred to as an "Achievement –

Performance model of social policy" (Aidukaite 2009, 25). Aidukaite explicitly argues that Soviet times did not deliver trade union practices we expect today, meaning that unions were mainly concerned with property distribution and, due to the socialist nature of the state, were not active in promoting the rights of the working class (Aidukaite 2004, 44). They were primarily the necessary feature of the regime rather than tools of worker representation, which partly represents the main idea of the Baltic transition as such – getting rid of the features introduced by the socialist rule and reforming the social policy. In this case, it also includes the labor union organization, denying the possibility of continuity and creating fragmented (perceived as liberal) form of social provision (according to Aidukaite this is referred to as a switch from a universal social provision) (Aidukaite 2004, 44). Thus, the transitional developments represented the ideological and practical willingness to individualize and liberalize the system, which serves as an explanation to the fragmentation argument. The foundations of Baltic labor competition, therefore, were built on the denial of the idea about strong representational bodies behind the employees.

As a result, Baltic States clearly fall in the category of extremely liberal market economies. Vanhuysse is emphasizing the need to use the argument by Bohle and Greskovits, who distinguish between two models of economic development within post-communist Central and Eastern Europe – "straightforward neo-liberal" and "embedded neo-liberal" paths (Cerami and Vanhuysse 2009, 8). The case of Baltic States can be attributed to the first scenario, which means deregulated labor market institutions, reliance on cheap and unskilled labor (as contrasted to for instance, German system of skilled workers) and low-value-added export strategies (Cerami and Vanhuysse 2009, 8). It also means, that, as the previous research review showed, labor is expected to rely on itself, being commodified.

Specific political setting can be also, to a certain extent, treated as a pre-condition to trade union weakness, especially in Baltic area. The argument by Esping-Andersen stresses,

that wage earners in the market are inherently atomized and their power mobilization heavily depends from the trade union organization and parliamentary/cabinet seats held by left and labor parties (Esping-Andersen 1990, 16). The presence of labor (i.e. socialist) parties is, therefore, an important precondition for labor representation (as in the case of Scandinavia), which unfortunately, cannot be found in the case of Baltic countries.

The above-stated arguments clearly introduce the reader to the general image of CEE and Baltic labor in particular. It is highly unorganized, fluid, commodified and seeking the exit opportunities in search for better employment conditions. With the trade unions being only marginally efficient and unable to attract new members, Baltic LMEs (and Latvia as the worst case example of it) are radically different from CMEs, which were discussed earlier. The absence of strong labor representative bodies and the overall pro-employer labor market orientation made cases such as LAVAL possible.

Chapter 2. LAVAL challenge for Swedish system of industrial relations

Loose Latvian domestic labor arrangements have clearly contributed to employers utilizing the collective agreement possibilities for their own good. LAVAL precedent, apart from being illustrative of liberal business irresponsibility, posed a major hit for Swedish corporatism, actualizing the differences and obvious incompatibilities between Swedish industrial relations and liberal agenda of the EU. The following chapter will introduce the reader to the specifics of LAVAL case, evaluate the ECJ ruling on conflict and expand on the challenges the Swedish system of industrial relations needed to face after the LAVAL precedent.

2.1. Posting of workers, service liberalization and the LAVAL case

The sub-chapter reviews the legislative regulations on labor movement within the EU, presents the LAVAL case and lists the main reasons for it to be reviewed in the European Court of Justice.

The national economies of EU can be characterized by different systems of service provision, employment conditions and labor market institutions (the differences being both fundamental –LME/CME – and marginal). The division of domestic labor market provisions thus puts the national systems in direct competition, which is unwanted in terms of common market. Posting of Workers Directive is the major legislative guide in the area of worker subordination to particular employment conditions and cross-border contracting, being an attempt to mitigate the differences.

The Directive was originally adopted in December 1996 and prescribed the hosting countries to ensure/guarantee the workers posted to their territory certain terms and conditions

of employment. Posted worker had rights to be guaranteed the minimal conditions of employment, which were either set by law or negotiated during the collective agreements in the country he was working in. These conditions included maximum work/minimum rest periods; minimum paid annual holidays; minimum rates of pay; guaranteed hiring/firing transparency; safety at work; non-discrimination and others (Directive 96/71/EC 1996). A "posted worker", according to the Directive, is distinguished by three major features: a) the worker is sub-contracted, which is mostly a characteristic of the construction sector; b) worker is expatriated due to intra-company secondments: c) worker is a subject of cross-border hiring with temporary employment conditions (Houwerzijl 2006, 5).

The framework, set by the directive, thus still allowed for its interpretation - it remained unclear whether the Member State can extend other parts of its domestic labor law to the incoming workers (Malmberg 2010, 3-4). In other words, it can be interpreted both as a minimal labor regulations, aimed mostly at securing the positions of labor in the host states, or a free labor movement embracing document, which emphasizes the need to limit the powers of hosting state in relation to the incoming specialists. The Directive primarily gave the member states a possibility to insist on equal working conditions and did not provide enough legislative power to oblige foreign employers to do so (Malmberg 2010, 4). As a result, cases such as LAVAL demonstrated the structural weaknesses of the Directive and its inability to fulfill basic functions when interpreted as an internal market instrument and not as a social protection tool (ETUC 2010, 4). A look at the aims and imprecisions of the Directive is, however, needed.

Initially, the Posting Directive was understood an instrument to combat "social dumping", preventing the unfair competition from foreign companies in the domestic market of a hosting country. In the period of Swedish accession, therefore, the Directive was guaranteed to be implemented "according to existing Swedish practice in labour market

matters" (ETUC 2010, 5). The fundamental problem, initially addressed by the Directive, therefore, was to which extent and in light of which reasons must the employment contract of the worker be overruled by the host state (ETUC 2010, 6). The Directive thus aimed to maintain a climate of fair competition and facilitate the respect for the rights of workers given that "EU citizen is free to move from one MS to another MS" (ETUC 2010, 7-8). The expected benefits from the adequately functioning PWD (Posted Workers Directive) were straightforward: posted workers granted the protection of host state; transparency and uniformity in applying the same rules to everyone active in the job market; core protection of the host country is respected by courts in home country, granting additional protection of the worker in front of his employer; and rights of the posted worker to be heard in the court of the host state against his employer (if needed) (ETUC 2010, 10-11). What are the major problems of PWD, evident even without looking at LAVAL and similar cases? Researchers identify several, among which are: unclear definitions of "worker" (left for national law) and "posted worker"; lack of accessible information for workers and companies; focus on applicable law with no separate standards set; and generally non-transparent structure of posting workers, which is usually done through the complex networks of subcontractors, agencies and letterbox companies (responsible actors are usually untraceable) (ETUC 2010, 14-15). This can be supported by the information provided by G.Hedlund during the interview – he stated, that one of the ways of increasing competitiveness (even for Swedish companies) is the creation of mother company, which employs foreign nationals[4] and provides them with less beneficial employment conditions. Such developments are alarming, since these are already domestic Swedish companies trying to get use from the weaknesses of PWD and remain competitive.

The Services directive, which followed, can be also evaluated as a free service movement embracing effort, significantly easing the cross-border cooperation and cross-

[4] see Appendix 2

border service provision for businesses within the European Union. It "requires Member States to remove unjustified and disproportionate burdens", which could harm the facilitation of the above-mentioned cooperation (European Commission). The result is significant relaxing of requirements for businesses, which are willing to supply their services abroad (including, for example, construction with posted workers involved) without setting up an establishment in the host country. If we project these requirements on the Swedish case, it is evident that the Service directive gave further incentives for businesses to evade following domestic labor provisions. Again, referring to the interview with Mr. Hedlund, if a business or its counterpart is established in Sweden, it must join the Employers' Federation and become responsible for all collective agreements concluded.[5] Services directive, however, allows avoiding the physical business creation in Sweden and providing the services in the framework of PWD.

LAVAL case is, in this regard, an issue, which questioned the precision of the EU legislation on cross border service provision and put national systems against the free market principles. LAVAL was a Latvian construction firm signing a contract for school refurbishment and extension in Sweden in May 2004. While the head office of LAVAL was responsible for appointing the posted workers, a subsidiary Baltic Bygg AB carried out the construction services. The initial dialogue between LAVAL/Baltic Bygg and the Swedish Building Workers' Union "Byggnads" was initiated in order to conclude an application agreement for the construction sector. The level of wages for posted workers, however, became the main collision point of the negotiation – while Latvian firms insisted on minimal payment (SEK 109) per hour, Byggnads insisted on the rate of SEK 145 as the average in Stockholm region (Davesne 2009, 5-6). Since the wage negotiations were unsuccessful, LAVAL concluded an alternative agreement with Latvian Trade Union of Construction

[5] see Appendix 2

Workers (LCA), which represented 65% of posted workers. While Byggnads refused to admit the relevance of the agreement with LCA, LAVAL was subjected to the collective actions with Byggnads and Electricians' Trade Union blocking the construction site (Davesne 2009, 6). The Swedish Labor Court hearing, initiated by LAVAL, claimed the blockade unlawful and indicated that Latvian company should be compensated for its losses. The Court, as a result, rejected the claim of Byggnads and claimed LAVAL compelling with nucleus of minimal mandatory rules/requirements, which are set in the Poster Workers Directive (or Directive 96/71/EC). The case was further transferred by the Swedish Labor Court and brought before the European Court of Justice. The ECJ was asked whether the collective action, taken by Swedish trade unions, was lawful in this particular situation.

2.2. ECJ ruling and new interpretation of the Posted Workers Directive

The following subsection reviews the ECJ judgment on the LAVAL case and gives an insight on how this might be interpreted as a new, pro-market reading of PWD, which significantly undermines the national corporatist labor arrangements.

European Court of Justice gave its judgment on LAVAL on 18 December 2007 with the ruling being clearly supportive of EU free market values. The ECJ recognized, that the restrictive collective action, undertaken by Swedish Unions, was part of their collective bargaining strategy. The Court acknowledged that Sweden traditionally uses the practice of collective negotiations in order to determine the working conditions and, under the national law, can use collective action to force employer to enter into negotiations and sign a collective agreement (European Court of Justice, 2007)[6]. The Court, however, pointed out that the host Member State, according to the Posted Workers Directive 96/71 is not allowed to force foreign service providers and insist on working conditions, which go beyond the mandatory rules of minimum protection. The right for the collective action, while being recognized as

[6] Case C-341/05

integral part of the Community law, is therefore allowed to be subjects of certain restrictions. According to the PWD, LAVAL case was treated as a situation, when the right for collective action made it construction work in Sweden "less attractive or more difficult", which therefore constituted a "restriction on the freedom to provide services" (European Court of Justice, 2007).

Interestingly, the precedent blockade as such was not considered problematic – according to the ECJ judgment, the blockading of constructions sites is justified if performed with an aim of providing the workers with essential terms and conditions of employment. Moreover, the Community law also does not prohibit the Member States to require the foreign service providers to enter into negotiations on terms of payment for the posted labor force. However, demanding the foreign undertaking to enter the negotiations on pay, which are not sufficiently precise, accessible and are characterized by the lack of provisions, is not permitted (European Court of Justice, 2007). Thus, since Sweden, due to the specifics of its corporatist system of industrial relations, did not have any automatically applicable legal or regulatory system, the internal agreements could not be considered immediately binding. Moreover, the ignorance of Swedish unions towards the collective agreements LAVAL has concluded in its country of origin (with LCA) was also considered unlawful by the court and permitted only on the grounds of public policy, public security or health (European Court of Justice, 2007). Since the actions of Byggnads could not be justified by "overriding reasons of public interest" (Davesne 2009, 7) they were qualified as the restriction of freedom to provide services, which exceed the measures needed for worker's protection. The Swedish Labor Court, accordingly, made Swedish trade union responsible for paying the punitive damages, caused by the blockade, to LAVAL (Malmberg 2010, 5)

LAVAL judgment thus became one of the most controversial issues in the European labor politics. First, it indicated the superiority of neoliberal EU market values over specific

intra-state industrial arrangements, and, secondly, demonstrated a potential scope of EU law interpretation. By studying an explanatory memorandum, prepared by European Trade Union Confederation regarding VIKING[7] and LAVAL cases, several especially problematic issues of the ECJ judgment can be indicated. First, the Court assumed that those experiencing fundamental freedoms (free movements of services, in this case), do not need to justify their actions even if these deliberately undertaken for social dumping reasons. Trade union action justification, on the other hand, was a subject of a harsh review. Second, the ECJ seems to recognize the rights for collective bargaining only in the context of workers' protection. Third, ECJ, while recognizing the collective action as a fundamental right, still inquired about its justification and rationality. Fourth and final, ECJ created an extremely important precedent of case-law, which will now serve as a potential reference point for the similar cases if these appear – while the EU has no competences to legislate on collective action, ECJ freely gives detailed guidelines for national labor courts on how to evaluate strike actions (ETUC 2008, 5). It is thus evident, that the ECJ decision directly interfered with the Swedish system of industrial relations, delivering a questionable judgment based on pro-market interpretation of Posted Workers Directive.

While the LAVAL impact on Swedish industrial relations will be discussed in greater detail during the rest of the analysis, we can briefly review the possible consequences ECJ judgment brought to EU in general. The report by ETUC suggests that EU-wide shortcomings are possible. The major problem is that the judgment creates a general puzzle of whether domestically collective agreements, which set higher standards than the ones set in law, will be recognized by ECJ as minimum standards (as it happens in, for example, Belgium or France). It is thus a question of superiority and value of bargaining products and

[7] A case of Finnish shipping company, which intended to register its vessel in Estonia, enter into new collective agreement with Estonian Sailors' trade union and save on wages by employing an Estonian crew.

statutory law (Malmberg 2010, 11). Additionally, the judgment also put the foreign companies in the position of power when confronted with domestic regulations.

2.3. Challenges of LAVAL to the Swedish system of industrial relations

The following subchapter discusses the challenges to the Swedish system of industrial relations brought by LAVAL precedent and pro-liberal ECJ judgment.

LAVAL case it did not only reflect the differences between "old" and "new" visions of market, but also indicated the possible internal dissatisfactions in the Swedish system of industrial relations. The fact, that LAVAL's position was supported by Swedish employer confederation (being provided with layers and judicial assistance during the whole trial) narrows the issue from the inter-state dispute to the classical employer-employee bargaining. In other words, the support by the Swedish unions showed the disagreement within the Swedish system and the willingness of some firms to regain more possibilities to exercise firm-level wage bargaining. Not all Swedish employers, therefore, were satisfied with the centralized wage bargaining principle and the case created a possibility for them to claim more autonomy. The case triggered internal re-evaluation of the system with the balance between the Unions and employers being shifted and employers clearly taking the advantage of the situation (Davesne 2009, 7). The precedent thus raised a question of whether the trade unions had excessive and stimulated a debate on whether "it is time to break Unions' monopoly on social relations" (Davesne 2009, 13). While we cannot claim that LAVAL case have started a complete deregulation of the Swedish system, it has certainly created a momentum for such to develop. What is clear is that there are two possible ways of aligning the Swedish system with the PWD – either setting the minimal rates of pay in law, or setting up a mechanism which would make the system of collective agreements universally applicable. Both, to a certain extent, would mean imposing major modifications on the

traditional Swedish model of industrial relations. The popularity of such reforms in Sweden is, however, highly questionable.

Charles Woolfson also addresses the problem of Laval case impact on the Swedish system of labor standards in one of his papers. He presents the "Swedish model" as an autonomous one, featuring minimal state intervention and clear rules "of the bargaining game", established by a so-called Saltsjöbaden Agreement (Woolfson, Thörnqvist and Sommers 2010, 5). The Laval case, however, gave the employers a chance to implement their own interests and limit the local trade unions in using strikes as means of industrial interest expression. Employers, therefore, gained a significant power balance shift in their favor while their bargaining power or "conflict capacity" of local employees was significantly weakened. Swedish TUs, encountering Latvian lower-paid non-unionized liberalized labor force, in this case, were bound by their own system – no laws specified the mandatory minimum wage, which had to be paid to the workers, since Swedish minimum wages were specified only via collective agreements and then negotiated more locally. The TU strike implementing logic, in this case, is also quite clear – Swedish unions had already encountered such precedents in the past and prevented (for instance, by so-called "sympathy strikes") the attempts of foreign businesses to lower the domestic wages (Woolfson, Thörnqvist and Sommers 2010, 9-10). ECJ Laval-protecting decision, in this case, is evaluated by Woolfson as the "erosion of the capacity to defend core national labor conditions (Woolfson, Thörnqvist and Sommers 2010, 25) and overall disregard of complexity of collective bargaining system from the side of the Court. The ECJ, in this case, did not acknowledge that the absence of lawfully defined minimal employment conditions can be attributed to the traditional specifics of Swedish corporatism and is neither the fault of the system nor the mean to restrict foreign companies from entering the market.

The other major issue, which was made salient after both EU enlargement and the following LAVAL dispute, was the total unpreparedness of certain Swedish industrial sectors to survive international competition. The theoretical logic presented by Andreas Bieler can be applied in this regard. He argues that social forces of capital and labor find themselves in different sectors. Transnational forces of capital and labor are organized in transnational sectors, whereas national ones find themselves in distinctly national production sectors (Bieler 2005, 465). This distinction, basically, maps the preferences of different types of social forces, depending on their focus – transnational labor forces are claimed supportive of regional cooperation and cross-border initiatives since any border barriers would be harmful for them. National labor forces, on the other hand, are enjoying more state protection and, consequently, are more state dependent, caring about their autonomy and being cautious to engage in regional dialogue (Bieler 2005, 465). The level of transnationalization, as hypothesized by Bieler, is dependent on time during which particular production sectors were exposed to globalization pressures. Additionally, the research states that regional or transnational character of the production structure does not, however, impose any particular model of trade union behavior, it just makes the cross-border activities more or less desirable. It also determines the possible weaknesses of the particular sector when facing the international competition (Bieler 2005, 478). While, as it was already mentioned, most of the Swedish production has historically competed in the international markets due to country being a small and open economy, the construction sector was sheltered and not used to outside pressures. The interview with G. Hedlund has also confirmed this pattern - "*construction sector, on the other hand, is a radically different scenario, as it did not experience any severe international competition till now, when foreign companies, including Latvian ones, started to enter the market. Due to this, both construction businesses and trade*

unions started to experience the pressures they were not used to".[8] Swedish firms, creating mother companies in order to employ non-Swedish labor force and cut the costs of construction[9], as noted by Mr. Hedlund, suggest for two possible explanations – either the sector was absolutely unprepared for foreign pressure, or local enterprises started to exploit their expanded post-LAVAL room for maneuver. We can, therefore, note a discrepancy between the traditional perception of high construction sector mobility and closeness of its Swedish counterpart. This, theoretically, allows us to qualify Swedish sector as a national force of labor, which is, traditionally, secured enough not to desire international expansion as much as a "liberal" construction sector would want to. Moreover, the precedents of Swedish firms trying to bypass their own domestic arrangements is an alarming sign – it suggests both for the efforts of businesses to cut costs and to exploit the systemic weaknesses, which appeared.

The LAVAL case thus created a potentially EU-wide precedent, which was made possible both by the overall neo-liberal agenda of EU legislation and the potential scope of its interpretation. The judgment undoubtedly refused to acknowledge that institutional differences are not immediately discriminatory and the demands of the Directive (such as presence of minimal wage levels) cannot be met by corporatist system, which is based on bargaining between social partners. The case, therefore, created a momentum for an erosion of trade union powers in terms of regulating the "fairness" of cross-border service provision and created the incentives for local businesses to "cheat" their own domestic system.

[8] see Appendix 2
[9] see Appendix 2

Chapter 3. Reactions to LAVAL challenges

The effect of the LAVAL challenges and the subsequent ECJ ruling affected domestic Swedish actors in a different way. While trade unions were clearly forced to justify their actions, state was forced to engage in the general re-evaluation of its labor migration policies. By looking at three types of actors (state, trade unions and business), the following chapter accounts for the previously discussed patterns and addresses the question of how different Swedish actors reacted to the challenge posed by LAVAL. It also inquires whether the changes implemented undermined the coordinated form of industrial relations.

3.1. State reaction to LAVAL challenge

The subchapter reviews the state legislative incentives, which came about as reaction to LAVAL challenges. It will first pay attention to governmental activities, which are directly related to LAVAL precedent. Then, it will address a more global perspective of how the actualization of cheap labor problem affected the general Swedish views on labor immigration policy, both from EU and outside of Union.

Jonas Malmberg (2010) when evaluating the Swedish experience in implementation of post-LAVAL legislation, identifies two ways of development – first, amendment of general Swedish legislative framework on collective actions (finally adopted in March 2010), and second – the specific regulations on when trade unions may be liable for damages (Malmberg 2010, 9). As a result, the following conditions were formulated in regard to the first point (i.e. when trade union is allowed to interfere with the employment conditions):

- The demands of the trade union must correspond with the general requirements of collective agreements effective in the particular sector (i.e. trade unions are not allowed to request anything different from existing and greed practices) (Malmberg 2010, 9).

- The demands of the trade union must relate only to "hard nucleus" (or basic defined conditions) of employment, meaning minimum wage, maximum working hours and other limit. It is not, as a result, allowed to demand the foreign employers to raise the employment conditions if the minimal ones area already satisfied (Malmberg 2010, 9).
- Trade unions are not allowed to engage in collective actions if the posted workers have the same conditions in their state of origin, i.e. do have the social guarantees at least as good as in the hosting country (Malmberg 2010, 9).

As for the regulation of the damage repayment, the LAVAL case is considered to be a precedent, which demanded the proof of a direct causal link between economic harm for the employer and collective agreements taken by the union. In this particular example, the direct economic harm was not proven and the trade unions were obliged to repay only punitive (non-economic) harm (Malmberg 2010, 10). As a result, we see the significant incentives to increase transparency in the employer-trade union relations and the minimal condition principle being a cornerstone, which still does not provide any equal treatment for foreign and domestic companies.

The question of whether to amend the Swedish legislative framework and, if yes, how radical should these amendments be, was thus salient. The creation of LAVAL Committee, appointed by the government, was a major step to determine "changes in Swedish legislation (that) need to be made as a result of Laval judgment" (Davesne 2009, 14). The Committee has identified four legislative scenarios which would allow to avoid similar precedents in the future - statutory rules for minimum rates of pay; declaring collective agreements universally applicable (by law); usage of framework set in Article 3 (8) of PWD (i.e. declaring collective agreements universally applicable if these are concluded by most representative employers and trade unions on the national level); and leaving the conditions of collective agreements to be regulated entirely by social partners (i.e. reinforcing their responsibilities) (SOU 2008, 56-

57). These proposals made by government-appointed Committee can be discussed in further detail:

- The Committee declared the first two options, which proposed declaring collective agreements universally binding and setting statutory rules for minimal conditions of pay, unsuitable. These solutions, although being in line with what Posted Worker Directive suggested, are declared potentially political decisions. Law-set wage levels would just solely determine the minimal rates of pay without them being established in the bargaining process. Universally applicable agreements, on the other hand, would reach the status of a statute, disabling contractual principles. The introduction of such changes, proposed by the Posted Workers Directive, was therefore declared to entail a "major intrusion into the Swedish labour market model" (SOU 2008, 57). While these can be functionally useful in terms of treating Swedish and foreign employers in the same manner, the costs for the corporatism arrangements are too high.
- Declaring the collective agreements universally applicable is also possible though framework set in Article 3 (8) of the PWD. It requires collective agreements to have the following features – these must be either generally applicable to all similar undertakings in the geographical area and industry, or must be concluded by most representative employers and labor organizations at national level (SOU 2008, 58). The Committee has ruled, that the Swedish system can be classified according to the first characteristic and the relevant changes can be, again, done though being stated in a lawful act. In this way, collective agreement could not only determine the minimum pay rates of posted workers, but also control for other conditions such as holidays, work periods and others (SOU 2008, 58).

- Finally, it is possible to reinforce the responsibilities of social partners and leave the regulation of collective agreements under their competence. It is, basically, the similar way of how Sweden has already implemented the PWD (SOU 2008, 59). This means, that the law on labor regulation (MLB) is proposed to remain practically unchanged. Since the ECJ basically restricted the TUs to express demands in the areas which are clearly set in Swedish law (such as night shifts, breaks, etc.), social partners will focus on the areas where no regulations exists, such as wages. They will, therefore, continue to enforce and negotiate on minimal payment conditions according to the agreements relevant for the particular national sector (Davesne 2009, 16). This, would, consequently, keep the competence of social partners and increase transparency for the foreign employers. This, according to the Committee, was the most preferable way/point of departure for Sweden after the controversial ruling by ECJ.

The conclusions of the LAVAL Committee are thus rather straightforward. The recommendations are clearly supporting the autonomy of trade unions with the remarks on making the system more transparent. The foundations of Swedish corporatism are, however, untouched as any additional legislative incentives are denied and classified as eroding the foundations of collective bargaining. With no legislative flexibility demonstrated in the suggestions of Committee, it was thus a question of either repeatedly arising tensions and similar industrial misunderstandings, or the need to redraft the PWD. Given the neoliberal trajectory of the Union and the ECJ judgment, which clearly put the common market values above the national systems of industrial relations, the chances of EU authorities changing it are low.

The creation of KAKI, a Committee on Labor Migration, which happened in 2004 (same year as LAVAL hit), is another major reaction of the state towards the problem of foreign labor. While being already previously mentioned in the analysis, KAKI was

considered to be a one-issue politically independent body, created on an *ad-hoc* basis in order to provide meaningful insight in the debate of "market vs. State as policy guideline" (Quirico 2012, 12). In other words, the issue it was tackling was ideologically close to LAVAL dispute – whether the free labor migration would bring more harm or benefit to the internal market, given its corporatist structure and overall trends of skill composition in the domestic economy (LAVAL thus further boosted its salience0. Its focus was two-fold, concentrating both on the issue of third-country nationals from outside the EEN (TCNs) and consequences of free labor movement in the EU market. This suggests, that LAVAL could be claimed a catalyzer for the general debate on sustainability of the labor policy in its "present form", both in the intra-EU and outside-EU perspective.

The proposals of the committee (published in 2006) were clearly following the labor market protectionist path and concentrated on the need to regulate labor immigration so that foreigners are not able to outweigh locals (Quirico 2012, 13). These can be formulated as follows:

- Labor immigration, either self-employed or backed-up by agents (such as firms, agencies, etc), must be /regulated in order to prevent the excessive amounts of foreign manpower being present in the internal market (Quirico 2012, 13).
- With regulative norms in place, both social actors (meaning trade unions) and government agency are expected to have their say on whether the person can be allowed to immigrate to work. Trade unions, in this case, are proposed a consultative role in order to assess whether the immigrants will be given equal treatment and no wage dumping can happen (Quirico 2012, 13).
- The labor migration is able to provide positive effects when it is targeted and balancing the areas, where the shortage of labor is visible (SOU 2010, 50).

While these statements can be claimed applicable both for TCNs and intra-EU workforce, several assumptions can be made. First, the Committee clearly acknowledged the two major challenging labor "flows", threatening to dump Swedish labor market – workforce coming from within the EEA and labor coming from the third countries. The intra-EU labor, logically, presented a more challenging case since, according to the free market laws and Swedish reluctance to erect any barriers after 2004, it could not be effectively limited. This, on the other hand, can be balanced through "filtering" of third country nationals and subjecting them to stricter "capability checks". Secondly, the tendency of keeping the social actors in the game is visible – Swedish authorities have repeatedly demonstrated their reluctance to change Swedish corporatist traditions, as we have already seen in the proposals of LAVAL Committee. Third, the proposal to "filter" labor here can be understood as willingness to attract high-skilled specialists, placing them in the industries where the shortage of skilled labor is salient. This would mean that labor coming from LMEs would be considered "dumping" and not skilled enough to be desired in the Swedish labor market. Fourth, it is the specifics of Swedish welfare state, which takes care of every immigrant immediately after his/her registration in Sweden.

All the incentives and policy recommendations listed above thus clearly speak for maintaining a certain amount of control over the internal Swedish labor market and keeping the corporatist arrangements intact. Moreover, several worker assessment incentives were also raised by KAKI in order to filter the incoming workers.

The 2008 law on labor migration, the major after-KAKI legislative incentive, however, was surprisingly liberal and practically neglected a big share of dangers the Committee warned the government about. The scope of liberalization and pro-employer orientation, brought by the policy, was defined by the Swedish Immigration Board as a "change of paradigm", which now empowered "market to assess its needs, not the minister, or

the parliament, or another state authority" (Quirico 2012, 14). The needs for the liberalization of labor policy were addressed by the following arguments, most of them were clearly lobbied by the Employers' Federation – a) Sweden, even considering its corporatist system of industrial relations, must be consistent with its tradition of openness and facilitate the creation of culturally diverse and open society (as stated by Tobias Billström, the Minister for Migration and Asylum Policy) (Quirico 2013, 3); b) changed composition of labor flows with Sweden attracting more asylum seekers than high-skilled workers; c) export oriented industry, which required multi-lingual specialists; d) needs to increase the labor supply in the areas, where local specialists are either unqualified or unwilling to work due to unsatisfactory working conditions (Quirico 2013, 4). Given these major arguments for a reform to happen, the strengthening of employers' positions is evident – the changes provided them with wider range of skills and opportunities available. For trade unions, on the other hand, this line of reasoning meant potential issues with supervision of working conditions, compliance with wage regulations etc. The major legislative modifications, which can be treated as expectoration from accepted Swedish labor market practices, can be formulated as follows:

- Swedish companies were no longer obliged to assign domestic and EU market a priority when searching for the desired workforce. They were now free to employ whoever they wanted.
- The veto right of the trade unions when assessing a job seeker was cancelled. Before (including the after-LAVAL years), the foreign job seeker went through a Labor Market Board test, followed by the joint statement of relevant social partners and the possibility of a relevant trade union to veto a candidate. Afterwards, a final Migration Board assessment was done. After the 2008 reform, only the verification and final assessment by the Migration Board were left. Trade unions thus lost their veto powers and opportunities to filter potentially unwanted candidates (which, before, was done in

order to prevent wage dumping incentives) (Quirico 2012, 15). One of the reasons for limiting trade unions, surprisingly, were their overwhelmingly negative opinions in case there were no labor shortages in the industry the person wanted to work in.

- The labor migration to Sweden did not, of course, become uncontrolled, but was significantly eased.

The assumptions we can make, looking at the variety of legislative incentives and consultative efforts, are two-fold. On the one hand, the government made clear steps, both by appointing committees and passing the legislation, to address the issues, which became extremely salient after LAVAL hit. These were both addressed on the domestic/European and international level. On the other hand, the real legislative incentive seems to be a "third way" between following the suggestions of the committees and adjusting to the framework of posted workers directive. Given the openness of Sweden, the liberalization happened mostly on the expense of trade union consultative powers when assessing the incoming workforce. No legislation, which would erode or change the existing system of industrial relations, (for example, law-set minimal wages or universally binding agreements) was adopted. The employers were, however, given more freedom and flexibility to increase their competitiveness.

3.2. Trade Union responses and cooperation incentives after LAVAL. Case of construction sector

The following subchapter will review the trade union responses to the challenges, addressed by LAVAL. It will first look at the patterns in trade union dialogue, concentrating on post-LAVAL Swedish – Latvian trade union cooperation and then review the steps Swedish trade unions have taken to prevent similar happenings in the future. The primary

sector of interest is construction segment, both due to being highly mobile and proving itself problematic.

While looking at the cooperation tendencies between the Swedish and Latvian trade unions in the construction sector, we must first identify the actors and the scope of their representation. The major body of labor representation from the Latvian side is Latvian Construction Worker Union (so-called LCA or *Latvijas Celtnieku Arodbiedrība*). The scope of labor representation, as follows from the official reply from the LCA president Ieva Gretere, is currently roughly 2000 workers, 200 of which are currently being employed abroad.[10] The official statistics suggest for the following trend – the biggest number of employed workers in Latvia equaled 107776 people in the year 2008, while the latest available data of the year 2010 present a number of 67574 specialists being officially employed (VIAA 2012, 29). LCA, even considering the possible changes in employment throughout 3 years (from 2010 to 2013) is representing a very limited part of the overall number of specialists. The self-employed workers, being absolutely uncontrolled and unregistered, cannot be accounted for. We cannot, as a result, treat LCA as an actor representing sufficient part of the labor force - workers are mostly dependent either on firm-level arrangements or are self-employed. From the Swedish side, Byggnads trade union can be claimed representative of construction industry labor force being active in the country. Currently, the union reports 80% of all construction workers employed in Sweden being the members of Byggnads. In the case of big cities or big construction sites, the number is reported to go up to 100% (Byggnads). The number of represented workers in April 2014 equals 102534 members in total (Byggnads 2014).

With the actors outlined, several viewpoints exist when looking at the dialogue between the two – the ones present in the scholarly literature and the data gathered during the

[10] Ieva Gretere, e-mail message to Jakimov, Sergey, May 8, 2014, see Appendix 1

interviews. Gajewska, when looking at post-LAVAL trade union cooperation patterns, notes that LCA was unaware of the consequences of signing a collective agreement with LAVAL. In the process of extensive two-sided consultations, LCA and Byggnads agreed on prevention of the similar cases and signed a written agreement on cooperation on 13 October 2005 (Gajewska 2009, 68). The agreement between Swedish Trade Union Confederation (LO) and Free Trade Union Confederation of Latvia (LBAS) was also signed on the same day, framing the global cooperation activities and emphasizing the common identity and aims to defend workers' interests. These incentives allowed to cover the potential gap in EU legislation and prevented other Latvian companies from concluding domestic cooperation agreements, dumping Swedish market and using the "antidiscrimination" clause as a justification. Notably, the third side involved in the preparation of LO-LBAS agreement was composed from the representatives of Swedish and Latvian construction sectors (Gajewska 2009, 69).

The effectiveness of the Byggnads-LCA agreement was later proved by a similar case – the company "Laval's Swedish Layers" has approached LCA in order to sign a collective agreement and cover the Latvian workers on the Swedish site. That would allow the company to use the anti-discrimination argument and lower the wages of the employees. LCA, however, refused to sign any agreements with the companies working in Sweden, following the terms of the agreement (Gajewska 2009, 69). This precedent, together with the agreements concluded, suggest Byggnads and LO demonstrated a timely reaction and quickly identified the need to strengthen the cooperation with additional arrangements. Given the generally high labor mobility and its LME-typical uncontrolled nature (in Latvian case), the incentives proved effective.

The other major issue, acknowledged by Byggnads after the precedent, was the language barrier. Byggnads) was prioritizing the need for reorganization toward the new diverse EU labor market and in 2004 is reported to initiate a post-LAVAL joint interpreter

project, involving Russian, Baltic and Polish interpreters (Bengtsson 2009, 3). The effort, made exclusively to figure out the reasons for foreign construction workers' ignorance towards joining Byggnads, suggests for union's concerns about unregulated labor force in the domestic sites. What follows from the interpreter report, however, is not the need to educate the workers themselves, but to combat the unfair practices exercised by employers, who were reported to force foreign workers to ignore union membership possibilities (Bengtsson 2009, 4). The union has also introduced a practice of employing full-time interpreters (Gajewska 2009, 69) upon signing the collective agreement with a foreign employer. The interviewee from LCA also confirms this – she states that "trade unions normally possess a wide range of multilingual information for different country nationals, which is aimed to prevent self-employment and educate workers about the advantages of joining domestic unions."[11] The other interviewee, however, still indicates that the cooperation possibilities are not exhausted – he points out, that trade unions understand the problem, but still try to tackle it domestically, without directly working with a "source" of the issue.[12]

The typology introduced by Gajewska and Bernaciak, who examined the mechanisms behind transnational labor solidarity, can be used to classify the nature of Swedish – Latvian trade union cooperation incentives. It seems two-fold – initially, it is competition-driven due to large welfare differences between the states (Bernaciak 2011, 39) and correspond with the view of Whitall, who argues that trade unions will engage into cooperation when their domestic interests/sites are threatened (Bernaciak 2011, 24). Without the conflict component, trade unions can be reluctant to European cooperation if they already possess certain influence in national industrial relations (Lóven Seldén 2014, 91). However, as we see in the example of LO-LBAS agreement, it can also take form of experience exchange "belonging-based" cooperation (Gajewska 2009, 11-113). I. Gretere, for example, states that even with

[11] see Appendix 1
[12] see Appendix 2

having the agreements between LCA and Byggnads unformulated, the problems, which require joint solving, are settled in cooperation and there is no communication barrier between the two bodies.[13]

If we look at trade union responses to LAVAL challenge from a more general perspective, the Posted Workers Directive still remains one of the cornerstones for the whole debate. The demands of unions in its regard, however, changed. If the pre-LAVAL PWD debate was concerned mostly with its implementation, the *post-hoc* union reasoning already demanded a complete revision of the Directive as unsuitable for the industrial relation types present in EU (Lóven Seldén 2014, 90). In this regard, there is a tendency to outline – Swedish trade unions (here, Byggnads and LO) are mostly reluctant to solve issues on their own, demanding reforms from other bodies. As G. Hedlund notes in this regard, "*Swedish trade unions do not want to compete with such cheap labor directly; they want to motivate their own members and local authorities to solve these problems*". [14]

The latest research by Lovén Seldén (2014), which involved conducting the interviews with trade union representatives, provides a notable contribution to the existing material. First, it outlines the view discrepancy between the Latvian (LBAS) and Swedish (Byggnads) representatives – while the relations improved over time, LBAS is clearly more positive about cooperation incentives then Byggnads, the representative of which still perceives the issue as largely political. Second, the research states that there are "third" factors, which contribute to "understanding" between Swedish and Latvian sides, something not present before. These "factors" are posted workforce from Belarus and Romania (valid for the period after 2008 financial recession), which puts both unions on the "same page" and shares the complexity of the situation (Lóven Seldén 2014, 95-96). Third, both Byggnads and LO are have expressed negative positions towards enhancement of cross-border cooperation as a method to avoid

[13] see Appendix 1
[14] see Appendix 2

after-LAVAL wage dumping. Byggnads representative, while acknowledging the union to be a "price cartel" (Lóven Seldén 2014, 100), clearly emphasized that it is not that much interested in facilitating cross-border dialogue and does not see it as a step to prevent race to the bottom in wages, domestic activities and protectionist strategies are more important. The EU countries, especially the new member states, are still in obvious need to be educated on how the Swedish (and corporatist system in general) works. The problem is, however, that Swedish actors (Byggnads and LO) are confident that, while the LME countries "might not have a real idea of independent trade unions and settlement mechanisms" (Lóven Seldén 2014, 96), their education is not worth it and brings more potential risks than benefits. Quoting the Swedish representative, "they don't think like we do and aren't accustomed" (Lóven Seldén 2014, 96).

In the light of all trade union post-LAVAL reactions discussed, what we see is a fundamental difference between CME and LME settings, which does not diminish even with the presence of free market. The Swedish trade union reactions are aimed primarily at prevention of the future accidents by concluding relevant agreements. It is, therefore, primarily a matter of securing home sites. Byggnads, being an influential actor in the domestic market, is not interested in in either changing the domestic system of industrial relations and giving up the role of the "price cartel", not engage in extensive LME education on "what the Swedish system is". This, to a large extent, goes in line with what G. Hedlund said during his interview – unions tend to address the problem domestically, without extensive reference to the "source".

Re-stating the third interviewee, who was active in LCA in the time frame of our interest, can make a final additional argument. While the respondent preferred to stay ananymous, he mostly claimed LCA to be irresponsible during the conflict and reluctant to contact the Swedish colleagues. This, as he sees it, has contributed to the skepticism of

Byggnads when talking about possible cooperation incentives. LCA, as a result, is seen as a typical LME trade union, not fully perceived as a trusted partner.

3.3. Business response to LAVAL precedent

The following subchapter will provide an insight into business responses to LAVAL precedent, using the business development practice of a major Swedish construction consortium active in Latvia. The major source of reference here is the interview by G. Hedlund, the CEO of the company.

We have frequently encountered the question of business/employers' attitude towards LAVAL. Up to this point, the analysis provided different views on how business response could be evaluated. While there is no need to review these in detail, major business reaction lines can be summarized as follows:

- Swedish employers possessed a two-fold reasoning regarding the case. On the one hand, they approached it as an opportunity to enhance their bargaining capacities and "weight" in front of the trade unions. Their support to LAVAL (as discussed in Chapter 2) suggested for the coming balance shift in Swedish industrial relations and dissatisfaction of employers with a "price cartel" status of Byggnads. While the government-appointed Committees on LAVAL and Labor migration recommended following a pro-union path, the 2008 labor reform provided substantial decrease of trade union veto rights in the questions of employing foreign personnel. It is thus considered to be a pro-employer legislative incentive.
- On the other hand, LAVAL precedent has demonstrated the unpreparedness of Swedish construction sector to compete on the international level and has made local businesses less competitive. Their participation in collective agreements, as a result, limited their abilities to employ cheaper labor.

With the reactions being clear, the post-LAVAL of employer strategies are hard to identify. Mr. Hedlund, a representative of a major Swedish construction business entity, has mentioned entrepreneurial strategies of coping with post-LAVAL competition, from which two can be crystallized:

First, as it was mentioned, Swedish construction sector was not exposed to international competition up until the moment when foreign (including Latvian) companies started to enter the market. The wages were set via collective agreements and the competition was mostly quality, not quantity driven. After the LAVAL hit, local businesses are reported to increase their competitiveness by "actually employing or creating a mother company, which consists of non-Swedish workers."[15] This is, unfortunately, one the "only ways of staying in the market"[16]. While the consumers clearly benefit from increased competition, which naturally pushes the housing and construction prices down, businesses are reported to violate collective agreements for the sake of cutting costs.

The second entrepreneurial post-LAVAL strategy is related to companies, which provide cross-country services. The example mentioned during the conversation relates to Swedish – Latvian business cooperation. As Mr. Hedlund notes, "*What we can see now is a tendency of duplicating/diversifying business to enhance its security – Swedish employers consider it more secure to have both Latvian and Swedish company segments. Since they always follow the rules of paying the domestic level wages even on Latvian market, there are no conflicts in this regard, only positive tendencies*."[17]

The second part of the statement deserves separate attention as it portrays the behavioral rules Swedish business follows in the foreign market. In Latvian case, the interviewee mentioned that Swedish business always follows same ethics and responsibility levels when employing Latvian workers, providing them with the same wage and social guarantee level as

[15] see Appendix 2
[16] see Appendix 2
[17] see Appendix 2

it is set in Swedish collective industry arrangement. He notes, that Swedish business "*cannot offend or limit people in order to gain more financial prosperity*" and, if done so, will lose its international certification, which is essential for providing cross-border services.[18] This, as an incentive to "educate the market", is, unfortunately, one-sided as there are no similar fair-play incentives from LME businesses (Latvian enterprises, in this case) in Sweden. Looking at the Swedish FDI share in Latvian economy can further strengthen the argument. Using statistical data from the Bank of Latvia, it can be seen that the amount of Swedish FDI in Latvia was constantly growing from 2000 to 2012. In the period of 2006-2013 it grew from 606 millions of lats to over 1,6 billions of lats, which, on average, accounts for around 20-30% of the whole FDI amount (Latvijas Banka) (for example, it was 23% in 2011). This, while being a demonstration of how Swedish employers seek to internationalize their business, also serves as a criterion of Latvian attractiveness for Swedish capital.

If we look at the general tone of the interview, it suggested for bigger flexibility of business as an actor after LAVAL. While trade unions cannot really adapt to changing conditions (it is a win or lose situation for them in terms of influence), business, given the recent labor market reforms, is more flexible. Its representatives treat the collective arrangements not as a primary influence source (as TUs do), but as a tradition, which can be understood much wider than law. The evaluation of LAVAL thus is more open-minded – while it created wage-dumping problems, it also, as Mr. Hedlund puts it, "*stimulates the discussion in the society, leading it to acknowledge possible weaknesses in the Swedish system and find possibly better models, which will work in the modern Europe*".[19] The precedent thus works as a way to re-think the bureaucracy and dramatic conditions for the employers, who violated a collective agreement.

[18] see Appendix 2
[19] see Appendix 2

The business response was thus pro-market and, to a large extent, pro-LAVAL. As our interviewee states, the demands of Byggnads to pay medium wages was "*a rather absurd thing to demand*", given that the minimal wage level was maintained. The unpreparedness of certain sectors to face competition, on the other hand, is troubling sign. That is why Mr. Hedlund treats LAVAL not as a devastating, but educating experience for the market – "*for Sweden it is not that tragic to have certain percentage of foreign workers being employed in the local labor market. It enhances competition, activity, educates market in terms of competition with foreign actors***."**[20]

The subsection has introduced the reader to entrepreneurial strategies after LAVAL, using the interview with major industry representative as a primary source. The stance of Swedish business, as a result, seems completely different from trade union and state positions – it is flexible, pro-market oriented and welcomes the education of domestic sectors through competition with foreign service providers.

In overall, the reactions of different domestic Swedish actors can be claimed uneven and reasonably dependent on their interests, both domestic and international. While state can be characterized as an actor mostly concerned about the general adjustment of labor market policies, trade unions adopt a defensive position due to risks of losing their domestic influence. Business, on the other hand, treats enhanced competition as a sign of market health, which will stimulate the development of previously sheltered-sectors. Swedish business is also reported to responsible when employing foreign labor force and is quite flexible in adopting new strategies for enhancing its stability, such as creation of "daughter companies" and country-specific segments.

[20] see Appendix 2

Conclusion. Has the Swedish industrial relation system adapted to post-LAVAL challenges and does the free movement of goods and services undermine CME setting?

The previous analysis has attempted to look at Swedish coordinated market economy as a liberalism-embracing system, which remained open after 2004 EU enlargement and opened its labor markets for Eastern European low-wage labor. The case of LAVAL and ECJ ruling justifying the Latvian firm have been major hits for Swedish system of industrial relations by putting free market values above Swedish national labor arrangements. Given this, the research hypothesized the need of Swedish corporatism to adjust to outside pressures being unable to compete with young EU8 liberal market economies. The empirical material discussed in the analysis thus allows us to evaluate the dynamics of Swedish reaction towards LAVAL and determine whether Swedish labor market was forced to adjust under outside pressures, giving up any of its arrangements. In other words, using the metaphor of M. Albert, is CME "sclerotic" enough to be incapable of facing the competition from more flexible liberal market economies?

We have demonstrated that CMEs are inherently different from LMEs in their logic of building industrial relations. Their institutional differences allow for creation of non-market relationships between social partners, which are not market signal dependent. Industry-level collective agreements, which come out in the result of bargaining, thus represent a joint effort of employers and trade unions in setting universal industry-applicable standards of employment conditions. As a result, the codification of employment conditions is limited – there is no minimal wage levels defined by law. The competition in the internal markets of CMEs is thus more "fair" and often quality-based, which allows employers to invest in high-

skilled labor and restricts them to compete on the basis of price dumping. LMEs, on the other hand, present a classic case of highly fluid labor markets with weak trade unions and commodified labor force, which is often self-employed. LME-type of labor, apart from being highly mobile, mostly features general skill composition with specific skills being not worthy to invest in due to changing employment conditions. For an outside observer, the LME logic is more understandable since it has "bottom" employment conditions set in law (i.e. minimal wages) – everything above the minimal requirements is left to be negotiated on intra-firm level (meaning direct worker-employer relationships). Competition is mostly price-dependent. What we see, therefore, are different value systems of both employers and labor, which directly affects their understanding of how competition happens. As compared to LME, CME can be compared to a closed ecosystem, which works perfectly from within, with actor behavior being coordinated, traditional and internally transparent.

Corporatism can be, to a certain extent, blamed "sclerotic" – firms are limited in their flexibility, production-outsourcing opportunities and are constrained by national arrangements. The integration of incoming labor also presents additional challenges – corporatist labor markets are perfectly working when closed, the inflows of foreign "liberal" and "uneducated" labor risk to undermine their domestic arrangements and create wage-dumping incentives, which potentially threaten the wellbeing of domestic labor force.

As we have observed in the examples of German and Austrian corporatist systems, these risks are acknowledged on the national levels and mitigated by entering transition periods and maintaining labor market limitations (7 years, in case of 2004 enlargement). The aims are clear – prevention of "race to the bottom" in domestic wages, protection against cheap non-unionized labor and filtering the incoming labor according to its skill-abundance. The effectiveness of these measures, however, is not straightforward – as it was demonstrated, both Germany and Austria still experienced substantial increases in employment migration. In

German case, the data suggests that the migrant skill composition was still weaker than the one possessed by local labor and roughly similar to the one in Sweden, which remained open. Barriers, as a result, did not contribute to substantial gains in high-skilled labor. Additionally, country has clearly become a "forbidden fruit" for migrants due to long transition period, which led to skyrocketing immigration numbers after 2011 and immediately stressful conditions for the market.

Having the protectionist examples of other European corporatist systems at hand, Sweden clearly presented a puzzling case of a highly coordinated corporatist system, which remained liberalism embracing and open towards free market after 2004. Primarily, its openness can be explained by relatively small size of its economy and historically export-oriented production. Additionally, the debate in scholarly literature emphasizes Swedish need of accepting foreign labor as a measure to maintain market competition, educate it and prevent from being "stuck" in its own domestic arrangements (as it happened with inexperienced construction sector). The proximity of Baltic economies, however, is still a major challenge for Swedish "liberal corporatism". Being the product of post-Soviet market re-thinking and neo-liberal trajectory, Baltic LME (and Latvian, in particular) is the "worst" example of demand-driven labor, ready to use all exit opportunities as soon as better employment conditions appear. With no strong trade unions to sustain it, Baltic workforce is the closest threat to dump local Swedish labor market arrangements.

The LAVAL case, which took 4 years to settle (2004 – 2008), was the direct demonstration of wage-dumping threat, brought by Latvian labor. Initially being an employer - trade union dispute, the case raised salience on much more fundamental issues for the open EU labor market. First, it reminded the EU community about the co-existence of different domestic type of industrial relations. Second, it showed that coordinated domestic bargaining systems were not entirely compatible with the neo-liberal trajectory of EU and needed

sheltering. The Poster Workers Directive and Services directive, which regulated the cross-border provision of services in the EU, were clearly LME-oriented, expected the counties to have law-set "bottoms" for employment conditions and did not recognize the binding power of collective agreements between social partners. The Union thus did not account for corporatist systems, for which having the law-set employment conditions would mean the major intrusion in their tradition of industrial relations.

The ECJ ruling, which was in detail examined by the analysis, clearly demonstrated the vector of European market development and the room for interpretation present in European legislation. We can undoubtedly claim that the pro-LAVAL ruling of ECJ (qualifying it as a victim of discrimination) has put the free market values above the nation-specific labor market traditions and aligned the European market to one common denominator. This contributed to the creation of a dangerous precedent, demonstrated the imperfections of European legislation regarding the scope of its interpretation and its abilities to undermine the influence of traditionally strong domestic actors. We cannot, of course, state that LAVAL case has initiated a complete deregulation of Swedish industrial relations. What we see, however, is the creation of momentum for the domestic actors to react in a way, which would modify the status quo in the local labor market.

The analysis made a distinction between three types of reactions to LAVAL challenges, coming from three major types of actors – state legislative incentives, trade union responses and business adjustment incentives. All have clearly demonstrated different flexibility levels, which were directly dependent from position where the actors stood before the case.

State reactions have been, undoubtedly, the most reformative and could be divided into two major stages – opinion gathering and creation of legislation. The situation was given an assessment from both case-specific (LAVAL Committee) and general (KAKI – Committee on

Migration) perspectives. While both were government-appointed, the recommendations received were suggesting keeping the system of industrial arrangements intact and demanding the redrafting of Posted Workers Directive to make it CME-compatible. While LAVAL Committee actively emphasized the unacceptability of any law-defined "bottom" for employment conditions, KAKI adopted a broader view and, while admitting possible positive effects of labor migration, stood for regulated labor immigration. KAKI's proposal, therefore, was a middle-way between closeness and openness, proposing selective immigration policy to balance labor shortages in certain skill-specific sectors. In the context of recommendations received, we can claim the state legislative reaction to be surprisingly liberal. The 2008 law on labor migration, to a certain extent, was an internationally oriented attempt to solve the challenges raised by LAVAL. While the scholarly debate mostly classifies it as pro-employer and market-oriented, we can claim it to be a realistic tradeoff between keeping the domestic traditions intact and acknowledging the need to support the competitiveness of local enterprises. The flexibility of domestic employers was undoubtedly enhanced at the expense of simplifying the foreign worker hiring procedure and removing trade union veto rights when approving foreign labor. The state, as a result, has demonstrated its flexibility by sustaining its politics of openness without substantial harm for domestic industrial relations.

Trade union reactions, on the other hand, demonstrate a certain degree of industrial stubbornness and unwillingness to give up domestic influence. Their reactions can be divided into two major lines – prevention of similar cases to happen and expressing their national position. The first was actively settled by concluding all relevant agreements with Latvia counterparts. These immediately proved effective when Latvian side prevented the similar precedent from happening. Further cooperation with Latvian counterparts, however, remained cautious. The efforts of Byggnads, as a result, completely fit in the theory of trade unions actively engaging into cooperation when their domestic sites are in danger. Domestic claims

of Byggnads, on the other hand, were less flexible – these have switched from willingness to adopt PWD to intentions of redrafting it completely. The situation was clearly approached in a closed, one-sided manner with trade union representatives claiming the LME representatives having no clue of how the Swedish industrial relation system works. While we must acknowledge the efforts of Byggnads and LO to educate the incoming labor force by, for instance, employing foreign-language interpreters, these incentives were mostly domestic. This is also confirmed by one of our interviewees, who claimed Swedish unions irresponsive to the need of engaging in deeper trade union cooperation and strengthen the "source" of incoming unorganized labor. The level of supervision over collective agreements, however, is reported to become higher – employers are controlled in a much stricter manner.

The business response can be claimed the most flexible out of three categories. The interview with major Swedish business representative, conducted during the analysis, identified two major Swedish business strategies in a post-LAVAL environment – a) diversification of business by creation of "daughter companies" in Latvia (and other countries); b) creation of "daughter" companies on domestic market and employing foreign labor. While the first trend suggests for business diversification and represents a common practice to reduce the transaction costs, the second method is basically an effort to stay competitive when facing foreign service providers and "cheat" the domestic system. As it was expected, the employers are generally pro-market oriented and treat competition not as a factor undermining their domestic influence, but as force to educate domestic labor market and identify its weaknesses. This is claimed especially salient in the case of construction sector, which was historically domestic market-oriented and was unprepared to face outside pressures. Interestingly enough, Swedish business strategy on foreign market is equally responsible to domestic one. The level of wages and social guarantees, provided by Swedish business to Latvian workers, is reported to be corresponding with Swedish collective

agreements. There are, as a result, absolutely no incentives to save money on employing cheaper Latvian labor, which suggests for much greater CME business responsibility when working abroad as compared to LME companies.

So does the free movement of labor, at the end of the day, undermine the traditional industrial relations of coordinated market economies? As we have seen in the example of Sweden, it certainly stimulates CMEs to adjust and reveals the fundamental differences of actors engaged in industrial relations. Corporatist systems are now clearly a European minority and, given the course outlined by the ECJ, they need to face the tradeoff between coordinated domestic non-market relationships and reality of unrestricted foreign competition. If we use a Swedish – Latvian example as a model of a typical LME-CME dialogue, the potential of trade unions to minimize the losses and dumping of their domestic market seems unexhausted. Adequate reaction to precedents and rapid conclusion of inter-union contracts (as happened between Byggnads and LCA) can secure CMEs from LAVAL-like cases. Bigger incentives for translational union cooperation are, however, needed.

In a broader picture, I believe that CMEs are now facing a classical impossibility trilemma – the inability to have secured domestic labor market, need to follow non-discrimination laws (as demanded by ECJ) and keeping/adapting Posted Workers directive in its present form. There is, therefore, much legislative harmonization to be done – CMEs will need to implement certain reforms with minimal collateral damage experienced by their traditional systems, but EU legislative bodies, need to acknowledge that institutional differences are not discriminatory as such.

Appendices

Appendix 1. Interview with LCA vice-president Ieva Gretere

Time and date: 9:00, 07/05/2014
Place: Riga, Latvia
Topic: Positions of LCA (Latvian Union of Construction Workers) towards market liberalization and status of Latvian construction workers in Sweden.
Via: E-mail
Original language: Latvian, transcript translated to English

What is the overall number of workers currently being represented by Latvian Construction Worker's union (LCA) both domestically and abroad?

Currently, the overall number of construction workers being represented by LCA is roughly 2000, out of which 200 are known to be working abroad. The number of workers employed abroad, unfortunately, cannot be precisely determined. This is due to specialists becoming highly mobile as moving without informing the union.

Does LCA have or gather any kind of statistics regarding the rise of worker mobility after the 2004 EU enlargement? Primary interest, in this case, is statistical data regarding the rise of mobility between Latvia and Scandinavia (Sweden).

There is no such statistics as the flow of workers remained mainly uncontrolled. We, therefore, do not possess any data regarding mobility to Sweden. The only rough approximation we can make is related to Norway – it is based of cooperation between LCA and Norwegian Fellesforbunde construction worker trade union. Back in 2007, this was the major factor for workers to join LCA in the first place. In Swedish case, no agreements like that exist and no additional motivation to workers was given.

What is the official position of LCA regarding the common EU market?

Everything, which makes the worker mobility easier and enhances the overall economic prosperity of Latvia is more than welcome. LCA, therefore, welcomes new mobility opportunities for its members.

Are there any worker protection mechanisms in place (especially talking about Scandinavia, in this case)? Or are these Scandinavian trade unions executing worker's representation autonomously? Mobility, unfortunately, comes together with higher risk of workers being uninformed about tax system, rights for rehabilitation leave, social payments and, most important, decent wage level. We do not have any particular well-established mechanisms to protect our workers abroad – this, if done at all, is mostly taken care of by domestic trade unions (Swedish/Scandinavian, in this case). No particular agreements are established in this regard.

How LCA regulates/supervises the level of wages and social guarantees granted to its members in Swedish/Scandinavian labor market?

It does not, as soon as workers leave they are, unfortunately, either subordinate to employer's wage policy or domestic wage arrangements (in the best case). They can also be self-employed – in this case they control their wage themselves. This actualizes the problem of social dumping, specially salient in Scandinavia – uncontrolled wages of incoming workers endanger domestic wage level, which is normally much higher. The biggest activity in the sphere of European social arrangements is currently dedicated to re-arrangement/re-evaluation of the Posted Workers directive. Major changes in the directive are essential for solving an old conflict between the economic freedoms and the protection of work rights. This, again, is especially true for Scandinavia – it is important for Swedish and Scandinavian market in general to prevent the influence of social dumping on its domestic labor market. That is why Swedish (and Scandinavian in general) trade unions normally possess a wide range of multilingual information for different country nationals, which is aimed to prevent self-employment and educate workers about the advantages of joining domestic unions.

What kind of cooperation currently exists between LCA and Scandinavian unions, especially Swedish Byggnads?

First of all, all European and world construction trade unions are united within different organizations. European – EFBWW, world – BWI. This is the first major framework for solidarity-based coopertation. In Swedish case, talking of both unofficial and official arrangements, no particular cooperation model exists. Swedish unions are active in supporting LCA with information and their working experience, but this is not formalised. We, therefore, have good contacts, which are utilized in case of any problems requiring joint solving. Closer cooperation would be, of course, favourable for both sides. We do indeed have an agreement with Norway, which helps us to harmonise the questions of wage and social guarantees when it comes to our members working in the Norwegian market. The absence of such agreement with Swedish counterparts is an issue to solve.

How would you evaluate an argument of Swedish trade unions being interested in strengthening their Baltic (and, especially, Latvian counterparts) in order to secure their domestic labor markets?

I think, that this argument holds, especially when it comes to Scandinavian (old EU) relations with relatively new EU member states, such as Baltic countries. Swedish unions are, indeed, very interested in strengthening Eastern European trade unions, including Latvian ones. The worker from Latvia, which will go to work abroad, is easier to handle when being more informed and knowing how and where it is possible to request help/address claims. Usually, all help requests and problem claims in the foreign and, especially, Scandinavian markets are heavily delayed due to workers being uninformed and unaware about domestic arrangements and legal procedures. An educated worker, as a result, will not cause social dumping problems and will be more responsible in terms of respecting domestic industry arrangements. He will, in addition, acknowledge the benefits of joining the union instead of being self-employed.

Appendix 2. Interview with George Hedlund

Time and date: 9:00, 15/05/2014
Place: Riga, Latvia
Topic: Swedish – Latvian labor market specifics and trade union interactions from the perspective of a major business entity.
Length: approx. 40 minutes
Original language: Latvian, transcript translated to English

Description: The following transcript is an interview conducted by Sergey Jakimov, the author of the present research. The interviewee is Mr. George Hedlund, representative of a major Swedish business entity, active both in Sweden and Latvia with the primary focus on property (forestry) and construction sectors. The name of the company is not disclosed due to the request of the interviewee, as it does not affect the meaningfulness and value of the answers provided. The transcript is a literal translation from Latvian. Certain phrases can be changed in accordance with English grammar rules. The participants of the conversation are indicated with abbreviations – **I** (Interviewer) and **G.H**. (George Hedlund).

I.– Hello Mr. Hedlund. First of all, I want to ask your permission to record our conversation in order to make the transcribing process easier.
G.H. – Yes, of course you can record it.
I. – Thank you. Let me first introduce the research, which is being conducted. My primary interest initially comes from the difference in the labor market organization in Sweden and Latvia. This is coordinated market economy from the Swedish side and increasingly liberal market economy from the Latvian perspective, which features such factors as cheap, uncontrolled and "commoditized" labor force.
G.H. – Right, so you mean the risks of increasing labor flows coming to Sweden?
I. – Yes, precisely. The main problematique I am looking at became increasingly salient after 2004 EU enlargement, when the markets became open residents from new member states. Despite of the fact that Sweden has featured radically different system of collective bargaining tradition and employer-employee relationships (meaning social guarantees, wages etc.), it welcomed the enlargement and opened the market. I am, therefore, attempting to define the lessons learned by Sweden in terms of accepting incoming labor force and assess the risks of social duping/race to the bottom, especially coming from Latvia. I believe that your input would be extremely valuable since you are a representative of a large Swedish consortium here, in Latvia, dealing with both Latvian and Swedish industrial arrangements and labor specifics. I would, therefore, start with the first question of which industry/sector of business are you representing?
G.H. – There are multiple field we are representing – the major ones are forestry (property acquisition and forest management) and construction. We value these sectors as a stable, low-risk, long-term investment project, which is not prone to any significant fluctuations. This the way we work in Sweden and Latvia.
I. – How many people do you employ?
G.H. – First of all, the skill composition. In Latvia we are directly employing mostly managers and other business support/coordination specialists, approximately 20 people. Workers (i.e. manual labor) are employed via mother companies. If we are including these as well, it is approximately 400 people we employ here. Significantly more in Sweden, of course.
I. – If we start with a "big picture", what are your thoughts on the differences between two market systems? Do you see the substantial differences between labor organization in Sweden

and Latvia, both in terms of employer-employee relations, wages, social guarantees, and contacts with trade unions?

G.H. – I understand your question. If we talk a bit more about our corporate activity in Sweden, it is approximately 20 times bigger than the one we have in Latvia with approximately 60 people directly employed only as managers. Therefore, we do have a lot of experience in dealing with labor dialogue. Indeed, Sweden has a very old and powerful tradition of having strong trade unions and strong employers. Trade union-employer interaction, basically, regulate our labor market, wages, working hours and others. The law says that we have to work approximately 60 hours per week and have 5 weeks of leave during the year. These are the only things regulated by law. The rest, whether your work during the day or night, weekdays or workdays, is the matter of negotiation between the trade unions and companies. Each model has, of course, its pros and cons, but the Swedish system is quite successful and serves well. It is less bureaucratic and more based on consensus and negotiations. Everything is understandable and workers understand, that if a company performs well, everyone is a winner. The wage system is correctly built. That is why Sweden has very few strikes and practically no workplace conflicts, if you compare it, for instance, to France or other European states, everything is peaceful. Usually, there is a 3-year contract with the employer and trade union, during which practically no clashes are possible. Of course, this system performs exceptionally well only while the labor market is closed, competition is rather weak and no foreign forms or workers are coming from other states. The incoming firms and labor clearly have the different rules of the game, they do not understand Swedish rules, language, no one wants to sign a contract with a trade union when you do not understand it. This is, perhaps, a situation where the classic European legislation performs better as it has clearly defined law norms. For example, if there is a legislation on a minimal payment of 7 EUR/h, employer cannot pay an employee an amount which is less that that. Is it is done, you break the law, everything is clear. In Sweden it is not regulated by law, there are only collective agreements by trade unions, which can be applied only to trade union members. If an employee is not a unionized worker, he can be paid, lets say, 2 EUR/h if he agrees with that. And this is, again, an unfortunate situation for Sweden, since the local firms work in accordance with the collective trade union agreements, but other foreign firms, who are entering the market on a temporary basis or by winning a project competition (building bridges or schools), are not very eager to follow Swedish rules of the game as these are not lawfully defined. Only trade union-employer agreements exist. Another paradox in Sweden is if you, being a Latvian (or any other foreign) company, join Swedish Employer Federation while only employing construction workers, your company is automatically becoming subordinate to every other agreement the Federation has, meaning all categories of workers. This means, that if you have, let's say, one driver, he will also be subordinate to Swedish trade union arrangements. If you have a bookkeeper, he/she will also be a protected by a relevant labor union/employer agreement. This will affect payments for work, insurance, pensions, etc. This might become overcomplicated and even Swedish can make a mistake. If your company is leaving and you break the contract with the Federation of Employers, you are still subordinate to all Federation's agreements till the moment they expire. Some agreements might end in one year, some expire in three. If your driver will enter Sweden in two years, it might happen that he is still protected by an old agreement, even if your company has left the Federation some time ago. Do you understand what I mean? The whole thing is absolutely untransparent. It all, of course, works absolutely fine while everybody is in Sweden and everything is based on collective arrangements. Incoming labor creates problems. That was the Swedish perspective.

When in comes to Latvia, minimal wages, working hours are regulate by law. Of course, we, as a Swedish company, are following the same principles of ethics and social responsibility

that we have in Sweden. Since our business is internationally certified, we are in balance between social values and economic values. That means that we cannot offend or limit people in order to gain more financial prosperity. We are following this principle in both Sweden and Latvia. If we deprive workers in Latvia, we can lose our certificates both in Latvia and Sweden. This is a voluntary system, which is especially typical for forestry. Latvian Forests (state-owned company) also works in accordance with FSC certificate – if you want to sell your wood in the international market, you must maintain the balance between your economic interests and social responsibilities. As a result, our business in Latvia is not dependent on cheap labor as we are not, for example, making clothes (laughs), wages are not our primary expense and concern even given the relatively big number of people employed.

I. – That is very interesting. As far as we can conclude, the responsibility between Sweden and Latvia is currently rather one-sided. Swedish companies respect their own domestic arrangements and labor market traditions, ensuring their Latvian workers with the same package of social guarantees. Latvian companies and individual specialists working in Sweden, on the other hand, are not motivated to preserve local Swedish labor market arrangements.

G.H. – Indeed, that is a very accurate conclusion. Because these are truly traditions, not law. While law is relatively easy to understand since its codified, traditions are much wider. Furthermore, there is a very debatable issue that Brussels cannot completely solve – whether Latvian firms, at the end of the day, need to follow these Swedish traditions or not, especially according to the laws on competition and free movement of services. It can also happen that, for instance, Swedish construction workers, who are used to a 20 EUR/h paycheck, are posted to Latvia, receive local salaries and are granted a 4 week of yearly leave instead of five. They would obviously reject such working conditions, as they would even risk their pension in Sweden if they work under Latvian legislation for a while. That is, therefore, a very difficult question of which legislation should be applied. What if a company a company engages in a short-term trip abroad to engage in its professional activity? An easy example could be made – if a, let's say, Latvian producer of industrial equipment produces it locally and goes to Sweden to install it for a couple of weeks, do we treat it as a commercial activity in Latvia or Sweden? That is still largely unclear.

I. – Given such an extensive input, several questions immediately arise – first, if we look at Swedish market from a macro perspective, all the risks of opening borders and removing barriers with countries of significantly lower income levels and the absence of labor market coordination were acknowledged and assessed. Why Sweden, despite of all this, was one of the most active EU's pro-enlargement member states?

G.H. – Well, we must understand, that Sweden is, at the end of the day, a rather small country in the global scale, which only 100 years ago was between the Europe's poorest. A lot of Swedish nationals immigrated to America; we had a second largest outflow or residents after Ireland. Therefore, at some point Sweden clearly presented a worst-case scenario. We have, however, always embraced the international free trade due to having quite developed industrial capacities, such as wood, metal, cellulose, industrial equipment/machines and others. We have used the international market opportunities to export these very widely and acknowledged that we have a lot to gain from it. That is why we are traditionally welcoming towards free market principles, and even if sometimes we lose from it, the overall end gains are always higher than losses. We all know, that the smaller the country, the bigger the benefits from the openness of markets. You can only erect additional taxation or customs barriers when you are a huge state with ambitions of fully regulated internal market. We think, that a country like Sweden will always win if allowed to trade its goods and services freely. This is the first argument in favor of Swedish openness and embracement of free market values. We have always had a strong tradition of democratic principles, especially

considering that one of the UN general secretaries was Swedish by origin. That is why we think that if people or a democratic Union wants to incorporate new members or make its market more relaxed, it must be welcomed. It is even profitable for Swedish Defense Policy when the Baltic States are on our side

Of course, there were debates on imposing limitations for the labor markets, initiated by Austria, France and Germany half a year before the enlargement took place. Sweden was also engaged in assessment of pros and cons of such an expansion. Our government, which consisted from social democrats, had discussions about limiting the labor migration for at least five years to avoid social tourism and social dumping. We have not, however, experienced that much of social tourism in these 10 years. There is, of course, increase in labor flows, also including Latvian workers, but the situation is not that dramatic as in UK. Therefore, I think that the overall experience is rather positive and Sweden made a right choice regarding its market openness. It was, in different ways, profitable for both Sweden and Latvia.

I. – Of course, for Latvian labor force it was very beneficial due to high level of labor commodification, low level of social guarantees provided in the domestic labor market and absence of trade union protection. I would, as a result, ask for your opinion on the reasons why guest workers from new member states, especially having the Latvian labor force in mind, are still possessing a risk of social dumping? To frame it differently, while Swedish trade unions are very active in educating incoming workers and promoting the idea of joining unions, why is incoming labor force still reluctant to participate in coordinated bargaining and prefer to remain totally self-employed? Why do we still see the lack on incentive to follow Swedish domestic rules of the game?

G.H. – Well, the construction sector is a classical one in this regard.

I. – That is truly correct.

G.H. – Everybody always wants to get the services as cheap as possible. It is also applicable to the construction project competitions, issued by authorities – the ones proposing most affordable price are granted the permission to build, let's say, school, paying smaller wages. If these are Latvian self-employed workers, they are only paying 10 or 15% in taxes. With Swedish workers, the taxation can reach 60-70% with all the social payments included. That would be, therefore, the situation to say that social dumping is taking place. Of course, Swedish trade unions do not want to compete with such cheap labor directly; they want to motivate their own members and local authorities to solve these problems. While construction sector in Sweden did not experience much competition historically, our export oriented enterprises are actively competing with German, Finnish and other EU enterprises. The ability to compete is, therefore, essential for such companies, as they cannot even pay their workers more to remain effective. Construction sector, on the other hand, is a radically different scenario, as it did not experience any severe international competition till now, when foreign companies, including Latvian ones, started to enter the market. Due to this, both construction businesses and trade unions started to experience the pressures they were not used to. Local businesses are now trying to find ways of increasing their competitiveness, one of which is actually employing or creating a mother company, which consists of non-Swedish workers. This is, unfortunately, the reality and one of the only ways of staying in the market. For Swedish people, however, this situation could be beneficial – house construction is becoming cheaper, flats are cheaper. That's is why we are all walking in clothes produced in China and use mobile phones made in Korea (laughs). Competition pushes the price down.

I. – When you were referring to foreign firms building schools, are you particularly meaning the LAVAL case?

G.H. – Of course, LAVAL is a very good symbol in this context. It is now hard to tell what is truth and what is not, as each side still has their own position, but the issue of common

industry agreement was indeed central in this case. The fact is that Latvian employer was actually paying its employees the minimal wage required. Swedish union of construction workers, however, demanded the medium wage to be paid to Latvian labor force, which was, subjectively, a rather absurd thing to demand.

I. – Indeed, LAVAL case was centered on the Latvian construction company, which went to Sweden and provided construction services while paying its labor force according to Latvian agreements/standards. The opposition from Byggnads, as a result, followed. How would you evaluate the impact of LAVAL on the attitude of local employers towards foreign labor force, especially Latvian workers? Or, on the other hand, business welcomed an opportunity to employ workers with lower demands?

G.H. – First of all, the case was extremely salient in the society. A lot of discussions happened around in Latvia, Sweden and Brussels. After it, the ability of employers to follow the collective agreements, especially if they are in the Employer Federation, became more supervised. We also had cases when, due to employing Latvian workers in our construction and forestry sites, our company signed the collective agreements which were demanded to be followed by trade unions. Therefore, as I said, the level of bureaucracy became abnormal and the consequences of not following the agreement are sometimes drastic for the employer. Nowadays, this system is clearly not the best, which is why the salience of the case is highly welcomed. It stimulates the discussion in the society, leading it to acknowledge possible weaknesses in the Swedish system and find possibly better models, which will work in the modern Europe.

I. – How would you evaluate an argument of Swedish trade unions and businesses being interested in strengthening their Baltic (and, especially, Latvian counterparts) in order to secure their domestic labor markets? Is something already done for strengthening the industry agreements in states, where the labor force is highly mobile and uncontrollably moving? Is the Latvian example applicable in here?

G.H. – Oh, that is a huge separate field for future activity, cooperation. Unfortunately, what we currently see is low interest from Swedish labor unions both in terms of Latvian unions and Latvian labor force. They do acknowledge the problem and start to understand the specifics, but are still trying to tackle it domestically. Although working with the "source" would be much more effective, intensive cooperation could make the situation significantly better and more understandable.

I. – What if we expand the scope to Eastern Europe in general? Is such kind of activity taking place? The interest to enhance cooperation exists?

G.H. – I would not say that it is "dumping" in the worst meaning of the word, which is happening now. My position on this is clear – it is much better for a worker from Latvia to go to Sweden and come back with 2000 euros after one months than to stay unemployed somewhere in the rural area. Even for Sweden it is not that tragic to have certain percentage of foreign workers being employed in the local labor market. It enhances competition, activity, educates market in terms of competition with foreign actors. As I said, that would be especially needed in the construction industry, where the lack of competition made they employers ill-prepared and unable to compete with foreign businesses.

I. – Thank you, the very last question I would like to raise is your personal vision of Swedish business development in Latvia and prospects of cross border cooperation in terms of services, "industrial education" and other mutually beneficial activities?

G.H. – First and foremost, the major thing we need is stability. Even conflicts, such as Ukrainian one which is happening as we speak, endangers and worsens the investment climate in Latvia. Actually, the crisis, which happened in Latvia, created a more favorable environment for investors and opened new opportunities for cooperation. Labor force, trade unions and potential partners became less demanding and more open to dialogue. The sectors,

such as construction, are now actually actively recovering both in terms of activity and quality. All in all, I think that the cooperation between businesses and labor coordinating structures is already starting to happen and will grow substantially in the coming years. What we can see now is a tendency of duplicating/diversifying business to enhance its security – Swedish employers consider it more secure to have both Latvian and Swedish company segments. Since they always follow the rules of paying the domestic level wages even on Latvian market, there are no conflicts in this regard, only positive tendencies. Moreover, Latvian labor force immigration also significantly enhances its competiveness as such since Swedish labor market clearly provides more professional growth opportunities for incoming workers.

I. – Thank you very much for your input and availability to talk. The issues you raised woud of great value for my research.

G.H. – No problems, it was my pleasure.

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