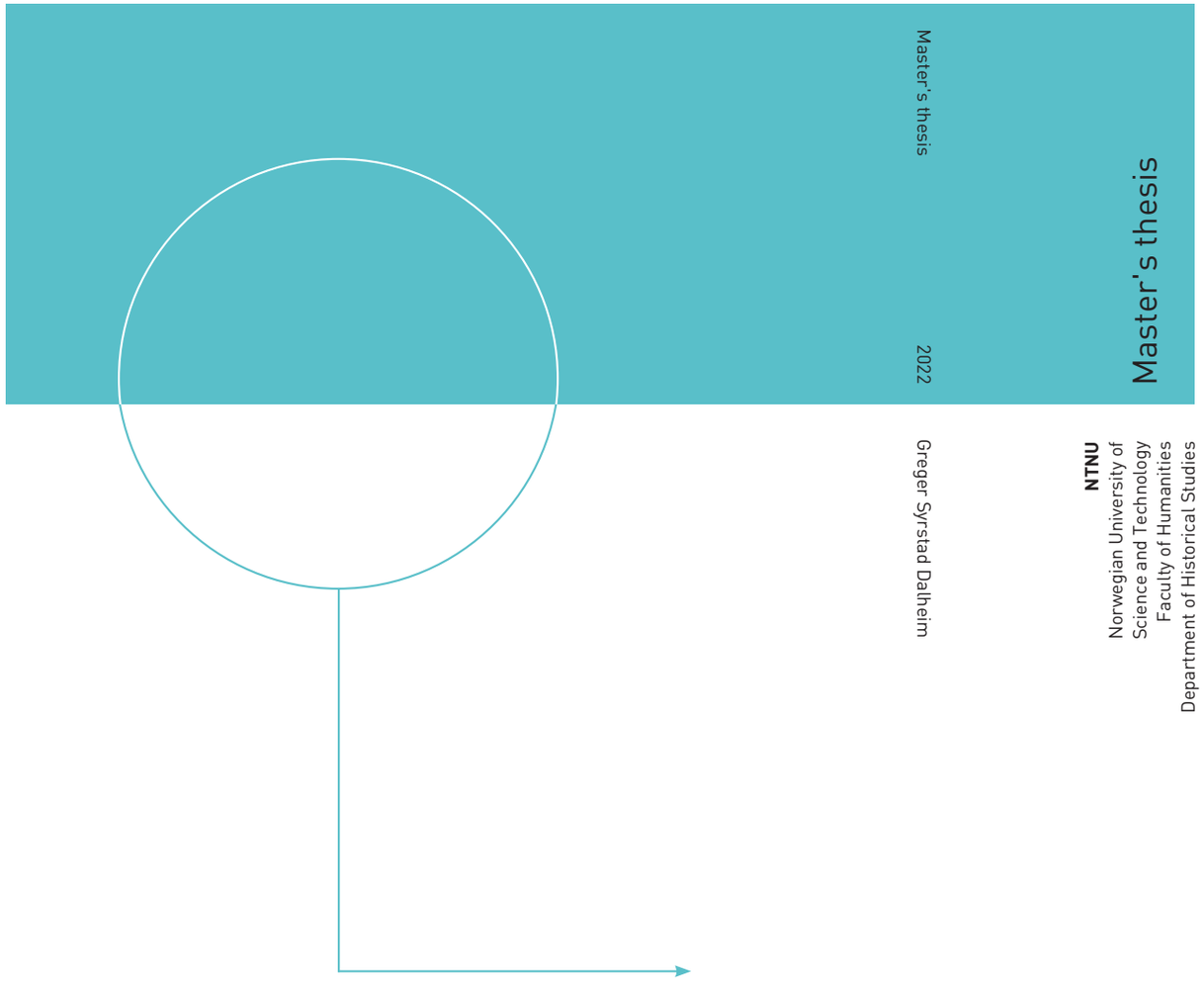

Master's thesis

2022

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The EEA scandal from the inside

May 2022

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The EEA scandal from the inside

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Submission date: May 2022
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Abstract

The so-called EEA scandal was publicly known in 2019 in Norway, and it affected thousands of Norwegian citizens. Making a long story short, the Norwegian Labour and Welfare Administration found out that the Circular of the National Insurance Act §11-3 was wrong as the EU regulation 883/2004 had been neglected since 2012 and regulation 1408/71 before that. In other words, the Norwegian government and its legal institutions have wrongfully practice national law ahead of EEA law since the beginning of the EEA agreement.

The research question used in this paper is: Can the EEA scandal be explained by internal conditions and/or systemic problems?

I answer the research question by analysing NAV's very own internal report on the EEA scandal published in 2019. I am also doing in-depth interviews of caseworkers within NAV's department of Work Assessment Allowance. By creating empirical data, I am able to analyse these findings in the light of earlier literature written about the issue.

The findings of this paper indicates that even though the EEA issue related to article 21 in the regulation 883/2004 is now resolved, there are no guarantee that another EEA mistake will not happen in the future. The data suggests that a lack of competence, training and resources are present and as the issue is connected to a systemic failure, it can not be solved in its entirety without a long-term plan. A collective defensive attitude towards membership/EEA cases are apparent and the educational system does not manage to properly train Norwegian students in EEA law.

Sammendrag

Da EØS-skandalen ble offentlig kjent i 2019, påvirket det tusenvis av norske statsborgere. NAV oppdaget at rundskrivet til Folketrygdloven §11-3 var feil og EU-forordningen 883/2004 hadde blitt oversett og neglisjert siden 2012, samme med forordningen 1408/71 før 2012.

Man kan derfor si at den norske regjeringen og domstolene har praktisert nasjonale lover feil, i henhold til EØS-regelverket helt siden begynnelsen av EØS-avtalen. Problemstilingen for masteroppgaven min er: Kan EØS-skandalen forklares ut ifra interne forhold og/eller systematiske problem?

Denne problemstillingen blir besvart ved å analysere Navs internrapport om EØS-skandalen, publisert i 2019. I tillegg er det gjennomført dybdeintervju med saksbehandlere i NAV, avdeling Arbeidsavklaringspenger.

Funnene i masteroppgaven indikerer at selv om EØS-problematikk knytt til artikkel 21 i forordningen 883/2004 er endret opp i, er det ingen garanti for at det kan skje feil relatert til EØS i fremtiden. Funnene viser mangel på kompetanse, opplæring og ressurser er et pågående problem og at problematikken som er knyttet til feil i systemet ikke kan oppklart med mindre man har en langsiktig plan. En kollektiv skeptisisme mot medlemssaker og EØS-saker er tilsynelatende til stede og utdanningssystemet har ikke gitt tilstrekkelig kunnskap til norske studenter om EØS-reglement.

Acknowledgment

First, I want to give my thanks to my supervisor Lise Rye, for helpful conversations and guidance. Thank you for helping me through this demanding process.

I also want to give my gratitude towards the informants that let me interview them even though their schedule is very busy. Without you, this paper would not exist. Thank you for your patience and reflections around your experiences.

Thanks to my friends and family for supporting me through my years at NTNU. A great thanks to my girlfriend Therese, for always helping me with care and support during stressful times.

Greger Syrstad Dalheim,

Trondheim 16. mai 2022.

Content

Introduction

In 2019, a legal bomb dropped on the The Norwegian Labour and Welfare Administration (NAV). Although the issue was of legal matters, the aftermath became devastating for Norwegians having received cash benefits outside the border of Norway yet inside the border of the EEA. Thousands of cases were processed incorrectly, and Norwegian citizens were wrongly convicted of insurance fraud, placing already sick people behind bars and in economic ruin. This is the first time in history, that Norwegian citizens have ended up in jail as a direct consequence of the misinterpretation of the EEA legal framework by the Norwegian government and its legal institutions.

So far 7 489 people have been identified as touched by the EEA mistake. 790 of these people received a letter from NAV saying that they owe the administration money, since they have received money from NAV which they did not have the right to receive. This was wrong. 6 400 people have lost their cash benefit on false terms. NAV does not know the exact number of people touched by this crisis as it goes all the way back to 1994, but there is reason to believe that less people are affected before the date of 2012. Still, by the beginning of March 2022, the total economic impact of payments and cancellations of debt is at the enormous sum of 365 million Norwegian kroner (37 million dollars) (NAV, 2022).

The Norwegian government, parliament and the legislative have often discussed the notion of receiving various social benefits outside of Norway, with the consensus being to limit the export of social benefits. Within the EEA and the EU, the national governments form their own welfare schemes and decides the level of protection given to such schemes, based on political prioritizing and the national economic situation. Social political regulations are the responsibility of the national legislation. Yet, such regulations must not be in conflict with the principle of an equal playing field and the four freedoms within the internal market. This have created a duality and a contradicting notion proving difficult to resolve.

In the broad sense, my mission is to untangle the EEA scandal from the very inside. I want to know how such a big mistake was made possible, I want to know when it happened, who is responsible and how Norway can prevent this from happening again. To help me answer these questions I need to get more specific and narrow down my research question. Therefore, my research question is: *Can the EEA scandal be explained by internal conditions and/or systemic problems?*

1.1 The structure of the paper

First, I will introduce my literature review. The literature review acts as a theoretical basis for my thesis, and I will review literature related to my research question. Furthermore, I turn the attention towards my chosen method and discusses why I chose a qualitative method by doing in depth-interviews and a documentary study. I will also discuss how I coded an analysed my empirical data before I touch upon the process of recruiting interviewees and the reliability of my research. Moving on, I will review the internal report on the EEA scandal by NAV before I analyse and discuss the findings of this report including a short conclusion. Next up is the analysis of the in-depth interviews where I continue to discuss the findings of these interviews in light of the theoretical basis created by the literature review, including a short conclusion. Last but not least, I will compare the findings and the two sets of conclusions before I touch briefly upon possible further research on the issue of EEA, NAV and Norway.'

2. Literature review

Previous research has offered different explanations as to why the EEA scandal could happen. Hans Petter Graver (2019), professor at the Institute of Private Law at the University of Oslo, Norway, voiced his opinion regarding The Norwegian social insurance scandal. In which Carl Baudenbacher (2019), professor Emeritus for Private, Commercial and Economic Law at the University of St. Gallen writes a response, calling for different answers. Starting with the scholarly literature by Hans Petter Graver and Carl Baudenbacher, my aim is to bring forth opposing views regarding the EEA scandal in Norway and how it could happen. I do this this to show how my paper can supplement this literature and to continue the research of the coordination of national and EEA law.

Thereafter, I turn my attention towards the NOU (2012) report "Inside and outside" and highlights chapter 17.3 which consists of the coordination between social welfare within the EEA and how it relates to Norway's welfare politics. During this chapter, I will present how this literature identified the coordination of the EEA agreement and the Norwegian welfare state and what issues and possible solutions it points to. By including this report, I hope to recognize patterns and possible signs of warning, by looking at how the Government mapped out Norway's relationship with the EU in the field of welfare in 2012. Comparing this to NAV's internal report from 2019 and the data from my interviews, I will be able to give some insight to what happened between 2012-2019 and therefore have a better understanding of the roots of the scandal.

The last piece of literature I will review is "NAV from the inside" by David Friman (2014). Friman writes as a former caseworker for NAV and might bring valuable insight, which I can relate to and reflect upon, as I work in NAV myself, but most importantly it might verify or disagree with the data I have collected from interviewing caseworkers in NAV and the document analysis of NAV's own internal report.

As I review the literature it is relevant to point out that the chosen literature reflects two different types of research. 1) The literature of Graver and Baudenbacher specifically seeks to explain and identify the EEA scandal and why it happened from two different perspective. While 2) the literature represented by the NOU (2012) report and David Friman (2014) is more general in relation to the EEA scandal. This literature focuses on how the EEA agreement affects Norway in the field of social security and thus NAV and how NAV as an organization have molded their caseworkers to be law abiding.

After reviewing each piece of literature, I will put the content into the context of my thesis and shortly discuss the relevancy of the literature compared to my paper.

2.1 The Impossibility of Upholding the Rule of Law When You Don't Know the Rules of the Law

Graver (2019) explains the crisis with the notion of it being the extraordinary character of European law and its introduction into national law which destroyed the judgment of the actors of the legal institutions. This have revealed a fatal flaw in the Norwegian legal order and shows the importance of sound judgment in upholding the rule of law, and how this judgment is vulnerable. Graver points to five key aspects as of why the EEA scandal became a reality in Norway. The five aspects being a political aspect, a contradicting

notion, the willingness to loyally fulfil the national policy, the "room for manoeuvre" and a legal overload. He also touches upon the fact that a lack of knowledge and competence about EEA within the legal system have created a reality of trust without control.

First, Graver starts with acknowledging that the whole picture is still not clear, and that the Government has set up a task-force with the mission to establish the facts and come up with explanations on how these dynamics developed (referencing NAV's internal report). The political aspect is then explained through the fact that the national political situation is a clear reason to the rule of law's failure. Graver's argument is that political parties have agreed that exports of Norwegian social security benefits should be restricted as far as possible. This resulted in a provision in the National Insurance Act which is in direct conflict with the EEA agreement.

Secondly, Graver then points out that the political aspect has created a contradicting notion. As the administration (NAV) was told to stay within the framework of the EEA rules, there was a clear message: People who reside outside Norway should not be entitled to benefits. This is double talk as Graver puts it. Thus, the administration has been faced with an impossible task, as both the EEA rules and the National Insurance Act cannot be followed at the same time.

Thirdly, the political aspect which then resulted in a contradicting notion created a snowball effect as Graver points to the consequence of a strong willingness to loyally fulfil the national policy. This willingness to loyally fulfil the national policy was strong enough to make NAV not abandon the practice even when the Social Security Tribunal announced that the practice was illegal. According to Graver, it was a young judge who defied the administration and the general opinion, and he was soon followed by several colleagues, but the illegal practice was still followed.

Fourthly, Graver points to the so called "room for manoeuvre" as a great challenge. EU law gives the national authorities room for protecting public policy, public security or public health and other legitimate aims of overriding importance. The Norwegian political culture based on social solidarity, trust and a recognition of the need for public regulation, it is important that political decisions can be based on legitimate national political processes and concerns. Graver continues to paint this "room for manoeuvre" as a challenge from a legal security perspective, as using the room for manoeuvre can threaten the EEA rights given to the citizens, because it is politically desirable.

Last but not least, Graver makes the argument that the EEA agreement represents a legal overload, as the implementation of the EEA agreement into Norwegian law was according to Graver, an extraordinary event. The basis for the argument is that a person who is well trained in national law will quickly recognize patterns in new legislation and be able to orient him or herself in unfamiliar areas of law. With EEA law, this is different. At one stroke, the massive agreement with its massive legal framework was incorporated into Norwegian law. He then argues that this legal overload has created a knowledge gap as there are a number of EEA rules that were, and still are largely unknown to most Norwegian lawyers. The rules are also according to Graver, presented in a style that is foreign, and not least with concepts, principles, values and purposes in a system that in many ways differs from national law.

This is where Graver characterizes the EEA agreement as an "extraordinary element". This "extraordinary element" (EEA-agreement) has created a reality of trust without control and points to a clear deficit of competence within the area of EEA law in the

National Insurance Act. This highlights the weaknesses of a trust-based system when the administration goes from being a caretaker of legal security to seeing it as their job to test the legal boundaries.

If the administration (NAV) had disregarded Norwegian legal principles and traditions, many prosecuting lawyers and judges would have been in a position to react and challenge the administration. This was not the case, as these cases challenged principles and rules that many Norwegian lawyers are still unfamiliar with. Even the Supreme Court in 2017 lengthened the term of prison in a case that was appealed by the prosecution. The public defender tried to invoke the EEA rules but was brushed off with the comment that the scope of appeal was confined to the length of the sentence, and not the question of guilt according to the law. The consequence of this, is that the Supreme Court has handed out a prison sentence against a person who most likely has done nothing punishable in the first place. The appeal that was made did not include the EEA argument due to the ignorance on the side of the defense lawyer. The president of the Supreme Court publicly defended the Supreme Court's sentencing by stating that the appeal in the case only concerned the sentencing. In this defense of the court, she suggests that she does not see it as the Supreme Court's task to challenge the legal basis for punishment, if it is not subject to appeal. With such an understanding in our highest court, we cannot have high expectations that the court will protect us if the rule of law comes under attack by the authorities (Graver, 2019).

Graver's argument highlights the fact that the relationship between our state powers has for a long time been based on the confidence that all do their best to build and preserve the rule of law, and that none of the powers of state systematically or consciously advocates undermining it. In the area of EEA law, it has been a reality of trust without control. Graver say's that the EEA scandal within NAV have shown us that the EEA agreement has weakened the judgment of the judiciary and the Norwegian legal tradition. This combined with a government that sees it as its task to implement a defined policy and to challenge legal boundaries might once again create difficulties in the future (Graver, 2019).

2.2 "Room for Manoeuvre" is the Real Reason for Norway's EEA Scandal

Baudenbacher (2019) does not buy into Graver's explanation and argues that the total failure of politics, administration, and courts cannot be explained by alleged "conflicts of law" problems, an "extraordinary situation" allegedly created by Norway's EEA accession, or by a "legal overload" which occurred 25 years ago when EU single market law had to be taken over. Baudenbacher points to the fact that every European country that have joined the EEA-agreement from the EFTA-side have had to overcome the very same challenges.

Baudenbacher (2019) highlights a collective defensive attitude as a core problem. In his point of view, it was the irrational collective defensive attitude of scholars, politicians, bureaucrats, and judges against EEA law, which from the outset was perceived as foreign and threatening, that prevented the relevant actors from acquiring the necessary knowledge and skills, rather than the "extraordinary situation" in which European law and its introduction into national law that destroyed the judgement of the actors of the legal institutions.

From the very beginning of Norway's EEA membership, Norwegian jurists were eager to ask the question of how the sovereignty of the country could be defended against EEA law and the institutions of the EFTA pillar, the EFTA Surveillance Authority, and the EFTA Court (Baundenbacher, 2019).

Further on, Baudenbacher (2019) attacks Graver's argument that the "room for manoeuvre" principle was inevitable with the implementation of the EEA agreement. Baudenbacher rejects the idea and again, turns to the fact that he cannot mention other EEA members with such national strategies. The room for manoeuvre is the root of all evil, and the NAV social security scandal is only the tip of the iceberg as Baudenbacher puts it. He then puts an emphasis on Norway's stronghold of the ESA presidency and claims that Norwegian courts were asked by the State Attorney from the beginning to refrain from referring cases to the EFTA Court, and if a reference was nevertheless made and the Norwegian State lost, the State Attorney invited Norwegian courts to decide in favour of the State anyway, often with success. Thus, Baudenbacher points to the fact that Norwegian courts are too easily prepared to follow political signals.

The problematic "room for manoeuvre" strategy have existed since the downsizing of the EFTA pillar to three states in 1995. Baudenbacher (2019) calls this dogma a systemic problem which needs systemic remedies. As it has become a part of the Norwegian EEA-DNA, lawyers go as far as to defend the "room for manoeuvre" even though their clients lose cases because of this strategy. According to Baudenbacher, the short term measure is to revoke the "room for manoeuvre" strategy and apply European law in a way that is both fair and faithful. He goes on to list up why the strategy is incompatible with fundamental principles of EEA law:

First, there is an issue with the principle of loyalty laid down in the article 3 in the EEA. Thus, Baudenbacher points to the principle of loyalty as a part of the explanation of why the "room for manoeuvre" strategy is incompatible with EEA law. He defends this statement by arguing that a government which instructs its administration to pursue national interests to the extreme in the application of international law explicitly or implicitly accepts that it may breach its international obligations. Baudenbacher then proceeds to compare the Norwegian state to a football-coach. If a football coach tells his players to play as hard as possible, to the limit of what is allowed, he cannot wash his hands in innocence if one severely injures an opponent.

Secondly, there is no "room for manoeuvre" in the EU and its members, the principle of reciprocity is also violated. Baudenbacher uses the principle of reciprocity as a perspective in which the EU and its citizens, along with the economic operators must be granted similar rights in the EFTA pillar as EEA/EFTA operators enjoy in the EU pillar. Norwegian citizens and businesses have broad access to the Union courts whereas their counterparts in the EU are denied such access to the EFTA Court. Thus, the principle of reciprocity is not fulfilled.

Last, Baudenbacher makes a point out of the fact that the "room for manoeuvre" does not fit with the principle of homogeneity. As it has been shown, this dogma leads to inhomogeneous results (Baudenbacher, 2019)

As a result, Baudenbacher points to what must change in order to minimize the risks of a NAV scandal happening again.

First, Norway must loosen its grip on ESA, as the authority has failed in the NAV scandal. ESA received a complaint in 2015 without taking any action. The authority must also

ascertain whether the rulings of the EFTA Court are correctly implemented by the national courts and if necessary start infringement proceedings against the country concerned.

Secondly, the Norwegian government have to commit to the establishment of a supernational body in the EFTA pillar.

Last but not least, EEA law education must be made mandatory for prospective lawyers and judges. It is incumbent on Norwegian universities and the Bar to require that new entrants to the profession are properly educated and equipped to identify, consider, and argue points of EEA law before all courts. Baudenbacher points to this as a long-term solution.

With the NAV scandal the weakest of society paid the price and these measures according to Baudenbacher (2019) is the only way in which Norway's systemic EEA problems of yesterday and today will no longer be problems of tomorrow.

It is also worth mentioning, that Professor Graver mentions that the Government set up a task-force with the mission to establish the facts and come up with explanations on how the dynamics of the NVA scandal developed. Baudenbacher points towards two problems with this taskforce. (1) If the task-force is only to investigate the NAV-scandal it will not even recognise the true reasons for the Norwegian EEA chaos. (2) The committee includes members who have until recently stood up for "room for manoueuvre". Their unbiasedness is at least questionable according to Baudenbacher.

2.2.1 Reflection and relevancy to my thesis

Hans Petter Graver and Carl Baudenbacher attacks the EEA-scandal from different point of views. Graver tries to explain it as a political conflict between Norwegian and EEA law through Norway's room for manoeuvre. In this sense Graver tries to explain why NAV and the people working there acted as they did in EEA related cases before 2019. On the other hand, Carl Baudenbacher tries to explain why Norway have failed as a collective and will continue to do so in the attempt to coordinate EEA and Norwegian law. The very room for manoeuvre is the root for all evil as Baudenbacher puts it.

Baudenbacher puts the NAV scandal into a larger systemic issue which consists of an irrational collective defensive attitude of not only politicians, but scholars, bureaucrats, and judges against EEA law, which from the outset was perceived as foreign and threatening, that prevented the relevant actors from acquiring the necessary knowledge and skills. When comparing this to Graver's statement when talking about the EEA attitude:

> *There are a number of rules here that were, and still are largely unknown to most Norwegian lawyers. The rules are presented in a style that is foreign, and not least with concepts, principles, values and purposes in a system that in many ways differs from national law (Graver, 2019).*

You can easily detect that Graver's point of view is anchored into the Nordic/Norwegian systemic model of thinking, while Baudenbacher writes from a supernational perspective, yet their conclusion also coincides. What the two agrees upon, is that the lack of competence in EEA law within Norway is a great problem. As I aim to analyze the views of NAV's own caseworkers and the facts from their official report on the EEA scandal, it is very relevant to see if Baudenbacher's argument of it being a larger systemic issue or if Graver's argument of political and internal aspects of the EEA scandal can explain the reason for the crisis.

Both Graver and Baudenbacher mentions the internal report from NAV about the EEA scandal, but at the time when they published their arguments, the report was still a work in progress. As the report has now been published, I am picking up the pieces left by Graver and Baudenbacher and will introduce an analysis of the official report to help me answer the research-question.

The strength of including this literature is therefore the ability to see if my sources will confirm or refute either of the explanations given by Graver and Baudenbacher. Either way, I will be able to supplement Graver and Baudenbacher's analysis with new empirical data. With the contribution of new empirical data, I will also be able to identify other explanatory factors.

2.3 Coordination of welfare between Norway and the EU

Chapter 17.3 in the official Norwegian report NOU (2012) addresses the implementation of coordinated rights regarding social benefits in the EEA area. The report states that the healthcare and social benefit system is designed by each individual EEA member. The EU does not have the authority to intervene in such matters. Nevertheless, the report also states that the legislator's room for manoueuvre is relatively narrow within the EEA. Marginal exceptions can be made if the legislator make changes of equal treatment for both people and territories in the National Insurance Act. The territorial dimension points to the right of receiving benefits and earned rights regardless of where you are staying. This is what we now refer to as exportability of benefits (NOU, 2012, p.484-485).

At the time when Norway first implemented the EEA agreement, there was little to no debate around the coordination of social welfare. The government bill nr. 100 states that the EEA agreement grants Norway what they wanted to achieve. The Norwegian people and businesses gain certain rights, while at the same time the EEA protects Norway's rights to preserve and develop our educational and social welfare system (NOU, 2012, p.485). The expansion of the EU in 2004 left Norway with an increase of working immigrants and at the same time an increasingly amount of Norwegians exporting social benefits to a foreign country (especially Spain). The consequence of this led to the coordination of welfare in the EEA to rise on the agenda for Norway's national welfare politics.

NOU (2019, p.486) gives an overview over the various social benefits in Norway and what the main criteria for receiving such benefits related to EU/EEA rules. The table

points to the fact that by EU/EEA rules you don't have to had worked or been a member of the National Insurance Act very long in Norway to be eligible for rights such as Work Assessment Allowance. For Work Assessment Allowance it is three years to be precise, with the possibility of transferring previous membership from a different EEA country.

The regime of free movement, equal treatment and welfare coordination inside the EEA is a significant expansion of the welfare-state's reach and circle of potential rights holders. An investigation and report done by the welfare and migration committee (NOU, 2011:7) states that the welfare-state was created in a period of time where there was significant less movement across borders and thus, reduced control over access to social benefits might create new issues when it comes to the welfare-state's design, incentives, trust and legitimacy with the futures population (NOU, 2012, p.487).

The report written by the Welfare and Migration Committee points to a two-sided strategy to strengthen the sustainability of the welfare-state within the EEA-market: 1) Prevent the growth of social dumping as social dumping increases the risks of bad health and the need for social benefits and 2) increased focus on activation and qualification, and at the same time shift the focus more away from cash benefits and towards services and benefits which is place-bound and thus not exportable.

Given the limitation to the room for manoueuvre strategy the EEA social security coordination brings, there is an alternative to the two strategies the Welfare and Migration Committee points to. That alternative consists of tightening the social benefits for everyone. This could either be done by reducing the levels of benefits or by increasing the requirements of when a receiver is eligible for a cash benefit. Such a scenario would create a more layered, differentiated welfare system, either by developing a minimum system where the rich acquires private additional benefits, or a system built on the principle of insurance and securing the status que for those who have worked up full rights, in addition to a restrictive minimum social security system (NOU, 2012, p.488).

2.3.1 Reflections and relevancy to my thesis

Chapter 17.3 of the official Norwegian report NOU (2012) addresses the implementation of coordinated rights regarding social benefits in the EEA area. In the very first paragraph it mentions the duality in which the healthcare and social benefit system is designed by each individual EEA member and the EU does not have the authority to intervene in such matters, much like Graver's argument of Norway's room of manoueuvre strategy. Nevertheless, the report also states that the legislator's room for manoueuvre is relatively narrow within the EEA and therefore should not have been established as a national strategy. The report then continues to establish the fact that the territorial dimension in which the right to receiving benefits and earned rights exists regardless of where you are staying, which makes social benefits exportable.

In the second paragraph above, the report points to the fact that the coordination of social welfare within the EEA agreement must be considered in the context of which timeframe it was implemented. At that time in 1994, there was little to no debate around the topic. At a later stage, after the EU expansion in 2004 there was an increase in number of Norwegians exporting social benefits to a foreign country (especially Spain). The consequence of this led to the coordination of welfare in the EEA to rise on the agenda for Norway's national welfare politics. The report states:

The welfare-state was created in a period of time where there was significant less movement across borders and thus, reduced control over access to social benefits might create new issues when it comes to the welfare-state's design, incentives, trust and legitimacy with the futures population (NOU, 2012, p.487)

The NOU (2012) report give a clear warning (social benefits are established as exportable, and there is an increase of Norwegians exporting cash benefits) to what was about to happen in the years to come. This was all established and published by the government the very same year as EU regulation 883/2004 was integrated into the EEA agreement.

What is interesting to come back to is the fact that the Welfare and Migration Committee points to a two-sided strategy to strengthen the sustainability of the welfare-state within the EEA-market. The NOU (2012) report also suggests an alternative route of tightening the social benefits for everyone. As I progress further on in my analysis, I will discuss whether the government have used said measures and what effect it might have developed. This report is also useful for my research as it is an indicator of how the Government understood the challenges, facts, possible solutions and the development of the welfare state in relation to the EEA in 2012. By adding new empirical data to an important Government document/report, I might be able to point to certain developments and supplement this to my own empirical data to substantiate my findings.

2.4 Law abiding caseworkers are valued higher in NAV

According to Friman, NAV has a vision to have flexible, user-friendly, and empathetic caseworkers. This vision is just partly fulfilled based on the caseworkers working in NAV today. Rules and details are highly prioritized and new employees are valued based on how regulated they are. The professional meetings are a good example, in these meetings the main focus is on knowledge about the rules and the procedures. Topic such as user service are not often discussed, and more likely forgotten, but the subject manager finds ways of mentioning it because it's a part of NAVs vision. The rules and laws are discussed based on how to use them in a user-friendly way, instead of looking at the possibility the rules give each and every benefit receiver. These limitations are created due to the many cases that must be discussed on every meeting, and thus the focus will again be on the rules containing enough information to finish a case. Which rule can be used to get rid of the benefit receiver, get them to work or to reject their application. Individual needs are set aside, and the focus remains to have followed the rules based on every case outcome.

Caseworkers who use the rules to give appropriate measures and tries to help the benefit receiver are given less attention at professional meetings. These caseworkers are often regarded as too kind and docile. On the other side, are these caseworkers those who gets positive feedback from the benefit receivers, but not valued and highlighted from the subject manager at meetings with the management. These caseworkers don't get their credit with their approach and are becoming a rare phenomenon in NAV. The reason their approach doesn't get approval, credit and valued from the management are NAVs vision and the limitations the professional environment is giving them. Even though the vision states that the beneficial receivers are entitled to this follow-up, the caseworkers are not given the possibilities from NAV. Eventually will these caseworkers be pushed out or tempted by other jobs with more potential. The regulated will be a bigger part of NAV,

which is not agreeable with the vision containing flexible, user-friendly, and empathetic caseworkers (Friman 2014, p. 58-62).

The rules and procedures have in the recent years become more standardized and detailed. Have this fulfilled the vision of giving individual service to the individual beneficial receiver? The growth of taking decisions based on the standardized rules, makes the caseworkers more regulated. The rules form the basis of assessments and decisions, and free discretion are slowly erased. Instead of being more open minded and flexible in relation to the rules, the caseworkers use their time to learn and get updated on the rules and the law (Friman 2014, p. 61).

2.4.1 Reflections and relevancy to my thesis

David Friman have experienced at firsthand how caseworkers have to abide by the legal framework in which they have the right to decide the fate of a potential benefit receiver. Friman makes a point by stating that NAV as an organization have created an environment where the growth of taking decisions based on the standardized rules, makes the caseworkers more regulated. The rules form the basis of assessments and decisions, and free discretion are slowly erased. Instead of being more open minded and flexible in relation to the rules, the caseworkers use their time to learn and get updated on the rules and the law. Friman explains that the creation of these limitations is due to the many cases that must be discussed. Friman explains that these limitations are created due to lack of resources and that they have too many cases on their plate, therefore, I aim to connect this to the findings generated from the interviews and thus see if my empirical evidence supports this notion. A cultural aspect might also explain why the crisis happened. If NAV have created a cultural environment such as the one Friman refers to where caseworkers are told to blindly follow the rulebook, what do you do when the ones creating the rulebook have misunderstood the rules themselves?

The EEA scandal is not the only crisis NAV have had on their plate these past years, and the Covid-crisis have pooled a lot of the organization's resources. I will therefore explore Friman's statement and discuss it in the light of the internal report and my interviews. I seek to confirm or refute if this has affected the organization's work towards the EEA agreement and its coordination to the National Insurance Act.

3. Method

During this segment I will guide you through my choice of method and I aim to give a clear and transparent overview as to why I chose a qualitative method by doing a case study through a document analysis and in depths interviews. When justifying my chosen method, I start with discussing why to choose a qualitative method? Moving on, I point the discussion towards the heart of my chosen method and explain the reasoning for choosing a document study and in-depth interviews as a logical method for this paper. I continue the methodologic journey by explaining the process of coding and categorizing all the data generated by this method, before I discuss recruitment of interviewees and the reliability of my method.

3.1 Why choose a qualitative method?

Professor Petter Dahler-Larsen (2007) at the Department of Political Science, University of Southern Denmark, claims that "Qualitative methods are a winning category" (Dahler-Larsen, p.317). According to Dahler-Larsen, the war between qualitative and quantitative methods in the scientific community during the last 30 years, have given qualitative methods the legitimacy it deserves. In political science, the need for qualitative methods is undisputed. Yet there is undoubtedly a need for defining the so called "winning" category. Dahler-Larsen (2007) states that in principle, the definition of a qualitative method can be divided into three categories: 1. A scientific method: Epistemology and Ontology. 2. A method of logical research and design. 3. Method with the technique of generating and processing data.

Qualitative method as logical research and design, but also as a technique of generating and processing data is the definition which relates best to my research project. Dahler-Larsen's category two and three is therefore the correct definition for my research. This sort of method operates with a flexible design of research where the categories connected to the method (such as terms and results of the data collection) is not predetermined by the scientist. On the contrary, the different categories arising from the analysis becomes a vital function for the research itself. This is what Aksel Tjora (2013, p.175) defines as a step-by- step deductive inductive method, where we in stages work our way from raw data towards concepts or theories for our research. The *inductive* process is the path where you work from the generated data towards the theory. The other way around is considered to be the *deductive* method, working from the theoretical towards the empirical. As I am seeking to uncover NAVs EEA-scandal from the very inside of the department of work assessment allowance, I connect my research to the inductive process where the data generated from my interviews will be processed, coded and categorized, before discussing the processed data in light of theory.

Furthermore, Dahler-Larsen points to three main reasons as to why the research method should not be pre-determined:

a) There is a lack of already existing research on your chosen topic
b) The topic is very compound and complex
c) The topic of research consists of cultural constructions, which the topic itself have created.

Reflecting over these reasons, I would argue that all three are transferable and relevant when choosing a method for my own research. First off, there is a lack of already existing

research on my chosen topic. As the failure to interpret the EU regulation of 883/2004 made the house of cards crumble in 2019, there has not been a lot of time to make extensive efforts to dissect the issue. In this short period of time, the whole world also landed itself amid a global pandemic, which in turn created an enormous pressure on the welfare-state and thus the focus of attention shifted to another crisis at hand. In other words, there is very little existing research on my chosen topic. Although a large selection of already existing literature on the topic of my research is missing, there is some relevant literature I chose to include. As I will describe in chapter three with the literature review, I have selected two articles written by law professor Hans Petter Graver and Carl Baudenbacher about the legal difficulties surrounding the EEA scandal in NAV. I have also reviewed a book written by David Friman, a former caseworker for NAV and the Government's official NOU (2012) report explaining Norway's relationship with the EU.

Secondly, the topic is compound and complex. The overall issue is relatively easy to understand, looking at it from a bigger perspective. NAV misinterpreted the EEA legal framework in relation to its own National Insurance Act. Whilst zooming in and getting a closer look, it stands out that there are multiple actors in play and various aspects to consider. For example, The Norwegian Labour and Welfare Administration is a very dynamic institution which frequently rely on politics to change its procedures and framework. Each government elected, has a say in the shaping of the framework put in place for NAVs thousands of caseworkers. The legislative and judiciary system is another actor presented as vital in the process of navigating through national and international law. The media can affect the importance of one discourse and the regular Norwegian citizen plays a huge role as he or she is the one having to navigate through the various benefits with the terms and demands that comes along. These multiple layers of actors which intertwines, shapes, and creates a complex issue to resolve. That is why I intend to analyze literature from a wide specter of actors. I review NAV as an organization from the document analysis of NAV's internal report regarding the EEA scandal. I review the crisis from a legal theoretical perspective by comparing the crisis with Graver and Baudenbacher's point of view, and I analyze the actors within the organization (NAV) as I interview caseworkers.

For the last reason Dahler-Larsen mentions: *The topic consists of cultural constructions, which the topic itself have created*. Though the issue itself is complex and consists of various aspects, there is some truth in Dahler-Larsen's words regarding cultural constructions. By identifying individual actors such as NAV which is the core actor for my research, I am able to point to certain cultural aspects within the organization. One of those aspects is the language that the caseworkers at NAV use to write letters to users. NAV is known for writing and explaining things to the public receivers in a particularly difficult manner and there have been lots of complaints regarding this. A big problem appears when the receivers of the various benefits are not able to understand what they are receiving and on which terms. The language even got its own name and is often referred to as "NAVsk" translated to "NAVish". Facing the dilemma of the "NAVish" language, one can refer to Dahler-Larsen's argument of cultural constructions when speaking of the EEA scandal, as politicians, judges, and caseworkers themselves could not interpret the language of the framework given at their disposal. Another example is pointed out by Friman (2014). He points out that rules and details are highly prioritized within NAV and new employees are valued based on how regulated they are. This have created a culture where you are more recognized by the management if you are good at following the rulebook precisely. Caseworkers who look after the benefit receiver's best

interests and challenges the rules, they might have to think outside the box and be creative, which can be more time-consuming and not welcomed by the management in NAV.

These reasons above, pushed my research in the direction of a qualitative method. When seeking answers to a complex topic with its own cultural construction and of very little existing research, I must get within the existing cultural construction and speak to the frontline of the EEA scandal. The people navigating the rulebook on a daily basis, is bound to have insight which I myself do not possess.

3.2 Documentary study

For this case study of NAV and the EEA scandal I have chosen to include an analysis of NAV's own internal report on the scandal. This piece of document is central to my thesis as it will be used as background data supplementing the data created by doing in depths interviews. The internal report produced by NAV gives me information about a specific issue in a specific time and place. Using this as a source of information, it is important that I see the document in context with the time it is written and by whom it is written by (Tjora, 2013, p.163). A strength by doing so, is that I will be able to compare the process tracing already made by NAV with the already existing literature on Norway's relationship with the EU. One of those being the NOU (2012) report "inside and outside". Comparing the government's assessment of issues surrounding the coordination of welfare between the EU and Norway with the development of Work Assessment Allowance is not only interesting but also a good way to put the issue into a historical perspective.

3.3 The method of interview

In the world of qualitative methods, the most widespread is the interview, either it is a semi structured or an in-depth interview. With my research I have chosen to conduct in-depth interviews, mainly in order to create a situation where the conversation is free flowing and circulating around specific topics in order to find answers for my thesis. The strengths of doing such an interview are the relaxed attitude it brings, as well as the fairly loose timeframe, where the informants will have enough time to reflect over their own experiences and opinions connected to the EEA-scandal. The point is to lift the vail of the informant's reality and to see the world from their point of view. There is a saying, that during a conversation you should always be open to the fact that the person you are speaking to might know something you don't. This fits the purpose of in-depth interviews very well as the whole conversation is built around the perspective of the informant and their knowledge on certain topics. The interviewer or researcher is there to learn from the informant's subjectivity.

In studies of organizational changes we pay attention to what changes the employees have experienced, how they have experienced these specific changes, what they have done to deal with the issue at hand, how the handling of the issue possibly have soften the negative experiences, if their experiences are connected to special circumstances around their own position or work, if it is attached to the work itself or other circumstances in the workplace, etc (Tjora, 2013, p.106). We want to be informed on how the informants attach feelings to the experience of the reorganization. With a social

constructive perspective in mind, we study how the informants understand and creates meaning to their reality based on the experiences they possess, for example in relation to the reorganization. In a similar manner, I chose the method of interview as I want to uncover the caseworker's subjective truths within NAVs department of work assessment allowance. Theirs truth relates to how they experienced the EEA-scandal and the changes it brought to the organization. How did they feel about these changes, what did they do to handle the difficult situation, if their experience is connected to their own position or work, if it is connected to the work itself or other relationships in the workplace and what have they learned from going through such a demanding reorganization in the workplace, are some of the questions I seek to answer.

3.3.1 Coding and categorizing

As I am doing two independent empirical-analytical approaches by executing a document study and in depths interviews, I have decided to approach the coding and categorizing of all the raw data material the same way for both analyses.

Beginning with the document study of NAV's internal report, I have reviewed the document and directly grouped the data into three categories which I found to be most relevant to my thesis. The findings of the report are therefore put into three different thematical groups. (1) Definition of terms, (2) The Circular of the National Insurance Act before and after the implementation of regulation 883/2004 and (3) The timeframe and a lack of competence.

For the interviews I chose to code them by doing a text-close coding as Tjora (2013, p.184) calls it. These codes are closely related to the inductive methodological framework, as these codes are gathered from the specific empirical data generated from the interviews (Table 1, 2 and 3 included in the attachments). I have generated 30 different codes from the three interviews and gathered the codes I found relevant to my thesis into four groups. I have thus categorized the many codes into four categories, leaving out the codes without relevancy. I have identified four themes from the transcripts of the interviews, (1) lack of training, competence, and resources (2) change in attitude towards the EEA, (3) slow internal processes and (4) more equipped for the future.

3.3.2 Recruitment of informants

According to Tjora (2013, p.145) the main rule when choosing informants for a qualitative study, is to choose informants which can reflect upon the topic of research. This is what Tjora (2013) calls strategic or theoretical recruitment of informants. Unlike quantitative surveys, the informants for interviews are not randomly selected. If we are studying a change within a certain organization, it is relevant to try and interview people who are closely related or involved in this change. In such instances, the recruitment process and the choice of informants is somewhat self-explanatory. In other situations, for example when you intend to study a more general topic, we will need to broaden the search for informants. If your mission is to research peoples experience with local environment, you can basically interview anyone as everyone usually has something to say about that. What you then must delimit is what part of the city you are looking at, maybe age-group, or for example certain types of housing.

With case studies we limit the recruitment of informants to the unit which exists independently from the research. In organizational studies we often do case studies within a company or a department. We thus, call the organization as our "case" and seek to gain knowledge about a phenomenon related to that case, by using different methods of generating data. When using interviews in such case studies, we assume that the interviews can tell us something about the informant's experiences and that this leads to insight in something connected to the organization of research. It is often relevant to further narrow down, by picking out subgroups of possible informants to get more consistent interview data. We will often seek out the informants or departments/divisions which seems to be able to contribute with information towards the variations or topic of research (Tjora, 2013, p.146).

Regarding my choice of informants, I have picked out informants on the basis of studying a change within a certain organization (NAV), but also on the basis of studying a more general topic (EEA and Norway's relationship with the EU).

As I am doing a case study where my case is NAV and the department for Work Assessment Allowance, I have picked out caseworkers within that department as my interviewees. I assume that they will be able to contribute with information towards the topic of research. As Tjora (2013) mentions, I have also narrowed down my choice of informants further as I have picked out two subgroups of informants. I have interviewed three caseworkers within the department of Work Assessment Allowance in NAV, where one of the caseworkers have the educational background as a jurist and have worked within the department for some years now. The other two is fairly new to the department and have worked there for only 8 months. I strategically chose this, as I hope to get more consistent data as I compare the answers of the two unexperienced ones to the experienced jurists. The caseworker who has worked there for a little while, might also have more insight into how the organization might have changed or managed the EEA crisis from 2019. The two caseworkers who are new to the department might have a different point of view, as far as how the organization is acting towards the aftermath of the crisis. Comparing relatively new caseworkers against the more experienced caseworker, I hope to verify or refute if organizational changes related to NAV's relationship with the EEA has been manifested.

One weakness with this method is that I initially was supposed to interview more interviewees, but for personal reasons one had to drop out. Some of the caseworkers who have worked closely with the cases already convicted of insurance fraud because of the EEA scandal, would not give a public interview on the matter, as they did not know what they were allowed to say or not.

3.4 Reliability

Tjora (2013) points out that in all types of social research the scientist will have some sort of engagement or involvement in the topic of research. This involvement might be considered as a distraction as it can affect the research projects outcome. Yet, within the tradition of qualitative research, it is accepted that total neutrality is an impossible task. With qualitative research, the scientist's prior involvement or knowledge would not be considered as a distraction but a strength or advantage. Tjora's (2013, p.203) opinion is that the researcher's knowledge is a strength, but how it is used in an analysis must be made explicitly. In other words, it is important to be transparent and to discuss how the researcher's position might influence the research.

As I reflect over the reliability of my own research, both advantages and challenges come to mind. I must acknowledge that writing about NAV and the EEA scandal was a biased decision as I work full time as a consultant for NAV and at the same time writes a master thesis in European studies at NTNU. As Tjora have mentioned, he considers this as a strength for my research, and I will shortly explain why.

The knowledge I have gained through studying European studies helped me acquire a job for NAV before I finished my studies, and my experiences and knowledge about NAV have given me a far greater understanding of Norway's social security policy than the average person in Norway. This combined made a great basis for my master thesis. What I see as a challenge is finding the balance between an objective researcher and a coworker or even a friend. The interviewees might be more relaxed around me and therefore share more, but this has also worked against my favor as some of the interviewees dropped out because of that reason.

4. NAV's internal report and assessment of the EEA-scandal

In December 2019, NAV presented a rapport on the internal revision of their misguided understanding and misinterpretation of the EEA legal framework. The rapport specifically set out to answer two questions:

A) What happened in NAV in relation to the EEA regulation which was admitted and entered into force in 2012?
B) What happened inside NAV after the social justice court acknowledged NAVs misinterpretation in 2017 and until the change of practice in 2019?

During this section of the paper, I aim to review NAVs own findings. First, I will go through the section of the rapport related to the implementation of EU regulation 883/2004 and how it is related to the cash benefit of Work Assessment Allowance (WAA). Then I will give a short review of the process tracing given by NAV on the EEA issue. After reviewing the report, I will analyze the content before I move on to discussing the findings in light of previous literature.

4.1 Work Assessment Allowance and its coordination with the EEA law

The EEA-agreement was signed on the second of May in 1992 and entered into force 1. January 1994. The agreement then included a full adaptation of Regulation 1408/71 which consisted of social welfare for workers, self-employers and families who moved within the European community. The Regulation 883/2004 replaced Regulation 1408/71, but was not implemented in the EU until 2010 and was not a part of the EEA-agreement until two years after. As all the EEA members had to approve the regulation, it was not implemented in Norway until 2012.

NAV's internal revision points to chapter one and article 11 and 21 in the Regulation 883/2004. Chapter one in both of the regulations focus on the definition of different terms and article 11 and 21 deals with cash (social) benefits. In chapter one of regulation 1408/71 the domicile of a person is defined as "one's usual place of residence" while a stay is defined as a "temporary stay". With the replacement of regulation 883/2004 the terms of "domicile" and "stay" remains the same in the Danish version, but the Norwegian version defines a "stay" as "temporarily residence" instead of a "temporary stay". The Circulars chapter one of both Regulations gives a definition of "domicile" while there is no guidance to interpret the definition of a "stay". Article 21 in the 883/2004 regulation consists of social cash benefits and states that:

> *A member of a social insurance or his family member which is living or staying in a different member state than the competent member state, have the right to recieve social cash benefits from that competent institution by the law of that same institution (Danish translation).* (NAV, 2019, p.20-21)

How article 21 is interpret in the circular of Work Assessment Allowance (WAA) is reflected in the framework and terms for receiving the benefit since it was established in 2010. Work Assessment Allowance became a social benefit in Norway in 2010 and is included in The National Insurance Act chapter 11. Chapter 11.3 have since the establishment of Work Assessment Allowance demanded a stay in Norway to be eligible to receive this benefit. National Insurance Act chapter 11.3 first paragraph states:

> *By this chapter, a term for the rights to receive Work Assessment Allowance is that the member is staying in Norway.*
> *Benefits can still be received if the member is receiving medical treatment or is participating in a work-related measure according to the work- and wealthfare-management law §14a.*
> *A member can also receive benefits according to this chapter in a limited period during a stay in a different country, if the stay is compatible with the agreed condition/activity, and the stay is not an obstacle to the institutions follow-up and control* (National Insurance Act §11.3)

This legal framework was implemented when WAA was established in 2010 and was not changed until 1. January 2018 when the law was adapted so that WAA could be received for a period of 4 weeks per calendar year and the member must submit an application of approval ahead of the travel abroad. Furthermore, the Circular interpreting The National Insurance Act chapter 11.3 was the same Circular applied to the regulation 1408/71 when WAA was introduced in 2010 and was not changed with the replacement of Regulation 883/2004 in 2012. This Circular initially states that if there is conflict between national and EEA-law the EEA agreements dictates the outcome. Yet the Circular also states the demand of staying in Norway if a member seeks to be given the rights to this cash benefit. The reason being that NAV needs to be able to follow up that member and to ensure that this individual receives the right benefit and work-related activity at any time, and if not, the member does not meet the requirements for receiving such cash benefit. With the exception being if the member receives medical treatment, work-related measures or if it is a limited period of stay in a different country (NAV, 2019, p.20-21)

When it comes to the exception of the rule, the benefit can be received during a temporary stay in a different country and it is stated that: "It should not be paid out benefits beyond the timeframe of a regular vacation-travel. Meaning a period of four weeks. Assuming that the temporary stay in a different country does not prohibit the planned activity related to WAA and that NAV's follow-up and control is intact". The member must apply before leaving the country.

However, this framework does not mention any difference in the region of the country where the member seeks to travel. It does not state any difference between an EU/EEA country and any other country.

In the circular for the EEA agreement related to WAA and Regulation 1408/71 chapter 11.3.2 states the following:

> *it is only by moving to a different EEA country or for members living in a different EEA country that the Regulation applies.*
> *For employers or self-employed living in Norway and who is a member of the social insurance there, the rules of the National Insurance Act and its framework applies for receiving WAA during a stay in a foreign country and also* ***by staying in a EEA country****. The Regulations rules of access to keep the cash benefit when sick during a stay outside of Norway as competent country is therefore not applied* (The National Insurance Act, §11.3 second and third chapter)

From 1. February 2012, chapter 11.3.2 is continued with the replacement of Regulation 883/2004. On 9. February 2018 it is specified that the Regulation which gives the rights to keeping the cash benefit during sickness during a stay outside of Norway as the competent country is not applicable when the members residence is in Norway.

On the 23. November 2018, an edit of the EEA Circular was made and §11.4.5 now refers to short term stay in a foreign country as regulated by member-states own internal law:

> *To access Work Assessment Allowance during a stay in a different EEA-country, contact with the visiting state must be made to facilitate necessary follow-up and control. There is no point of doing so if the stay is of a shorter period.*
>
> *A short term stay such as a vacation would by this definition fall outside of article 21. Therefore, the member-states have the rights to regulate the rights of social cash benefits by their own internal law, as long as it does not discriminate.*
>
> *A hypothetical short term stay in a EEA country must then be regulated by the ordinary exceptions in §11-3* (NAV, 2019, p.21)

NAV's internal revision of the EEA scandal points out that this change made in November 2018 was made as a clarification of the text and would not bring materiel changes

In chapter 11 of the Circular of regulation 1408/71 and regulation 883/2004 it shows that the regulation only applies when a member moves to or have their residence in a different EEA-country. For employers and self-employed living in Norway and is a member of the Social Insurance would not fall under those regulations. In November 2018, it is clarified that short term stay in a different EEA-country falls outside of article 21.

On 9. November 2019, there is an adaptation in article 21 of the regulation 883/2004 in the Circular related to the National Insurance Act §11.4.5:

> *The regulations article 21 give the receivers of Work Assessment Allowance right to keep their cash benefits by EEA-law even if they are staying in a different EEA-country, as long as they are a member of the Norwegian social insurance.*
>
> *Article 21 of the regulation 883/2004 also state that the benefit should be granted in accordance with the National Insurance Act in Norway. In reality this means, that if the stay is compatible with the expectations and activities that follow with receiving WAA, the member can find themselves in any given EEA-country and still receive said benefit. The receiver does not have to apply to keep their benefit while staying in an EEA-country* (ibid)

Further on §11.4.2 and §11.4.3 have adapted the fact that a receiver of WAA, usually have the right to keep their benefit during any stay in an EEA-country, regardless of the duration of the stay. Still, the given terms for receiving such benefits must be met (ibid).

It is worth mentioning that these changes clarifying how the legal framework is supposed to be correctly interpreted, was made after the internal assessment of what went wrong regarding NAV's EEA-scandal.

4.1.2 Process tracing leading up to the EEA scandal

With the implementation of the EU regulation of 883/2004 in 2012 the directorate signaled that there was no significant change to the earlier legal framework. This was signaled both from the directorate and speakers from the EU commission. NAV then updated the memos and circulars based on this information. Then continued the practice of following the legal framework of the National Insurance Act when discussing temporary stay in a foreign country, and the EU regulation 883/2004 when discussing cases of settling or moving to another EEA member-state (NAV, 2019).

Reports, parliament messages and legislative processes before and after 2012, have discussed the notion of receiving various social benefits while staying abroad. The consensus being to limit the export of social benefits when discussing settling or moving to a different country. When temporary stay is mentioned, it is attached to The National Insurance Act, and not to the EU regulation and thus the national law is applied and not the EEA legal framework. Verdicts of The National Insurance Court and judges of the judiciary system confirmed NAVs legal practice until June 2017.

The liability and responsibility relating to foreign territory is spread out over multiple units across the line, also internally between the lines. This is also the case for the knowledge and the competence of the same area. In 2014 there was discussions of creating a centralized unit for tasks surrounding foreign territory. Further on, in 2016 the need for an EEA-coordinated taskforce was discussed in an expert group represented by both the departments of social benefits as well as the department of competence and knowledge. Neither resulting in working measures (ibid)

Between the period of 2012 and 2017 there was raised multiple concerns and questions surrounding NAVs practice in relation to temporary stay in a foreign country. EFTAs surveillance agency also started to ask questions in 2017. Non would lead to the correction or change of NAVs misguided practice. The National Insurance Court emits its first ruling against NAVs misinterpreted practice in June 2017. However, until July of 2018 the rulings and verdicts are mixed and some rules in favor of NAVs practice and some against.

NAVs appellate body informed the directorate for the first time in November 2017 about the The National Insurance Courts new use of article 21. In this note, NAVs appellate body mention that they will put together a taskforce to consider and discuss the issue. The appellate body disagreed with The National Insurance Courts assessment (ibid)

In July 2018, the taskforce delivers their assessment to the directorate. They ask for an explanation of the interpretation of the regulations article 21 and suggests that temporary stay in foreign territory is to be kept out of the regulation. The Directorate uses a long period of time to assess this, in spite of NAVs multiple reminders, including a letter where NAVs appellate body asks the Directorate to consider making an appeal in a case towards the Court of Appeal. The internal revision has been informed that the level of competence and knowledge within the Directorate on issues of international law was vulnerable.

The National Insurance Courts oriented NAV in October/November 2018 that it considers putting forth certain cases to the EFTA-court in order to get an advisory assessment. NAVs appellate body lifts this further and the issue gets more and more attention from the Directorate. The Ministry is then connected to the issue, and after a few meetings in January, and in February/March of 2019 the Ministry gives instructions to change the practice of temporary stay in a foreign country, so that "short term" visits abroad is also considered a part of the regulation. The Ministry communicates that this change applies to cases in the future (ibid).

After this decision the Directorate worked unnecessarily slow in implementing the change of practice. The updated memo and circulars were not ready until end of June 2019. After this is published, a series of questions were raised concerning the time of effect and the definition of "short term" stay. During July it becomes clear for the leaders within the different social benefit departments that there has been a misinterpretation of the law,

thus making the time of effect all the way back to 2012 with the implementation of EU regulation 883/2004.

By the end of August 2019, an interdisciplinary taskforce in the Directorate concludes that it most likely has been a misinterpretation of the EEA legal framework in relation of the National Insurance Act. The Ministry is oriented about this shortly after and after a dialogue between the two, the directorate asks the State attorney to review the issue at hand. In the end of October 2019, the State attorney agrees with the assessment and the case is made public through a press conference 28. October 2019 (ibid)

4.2 Explanations and observations by NAV

The Directorate is dependent on a unanimous decision within the Ministry before NAV can change its practice. The internal process within the Directorate is also time consuming. The reason for this might be that there is not enough continuity in the working process, as there are multiple different people connected to the same case at different times. This is because there exists a lack of capacity in the different NAV departments. Too many activities compete for the attention regarding their issue, therefor the effort surrounding the case lacks depth and concentration. Most of the involved parties have had other demanding tasks which was perceived as more important during the spring of 2019.

The guidelines from the ministry in February and March 2019 was because of the change in practice would apply for cases set in future times. Emphasis on the aspect of control and the definition of "short term" became crucial for the issue's further development, as this indicates what kind of priority the caseworkers and leaders would apply to the issue.

Some in the Directorate had certain expertise in the field of the EEA, but not enough knowledge about NAV and its practices. Others was well educated in NAV's practice, but lacked EEA-competence. A better combination of knowledge in both the EEA and NAV could have led to the discovery of the malpractice sooner.

If the different departments of social benefits within NAV had acknowledged that there was a misapplication of law at an earlier stage, the issue would have gotten a different priority and the consequences could have been discovered sooner. NAV have also acknowledged that the internal communication during this crisis have been poor. This specific issue has also uncovered weaknesses with the risk management within departments of NAV's social benefits (NAV, 2019).

4.3 Analysis and discussion of NAV's internal report on the EEA scandal

During this chapter I aim to analyze NAV's internal report on the EEA scandal. I have categorized the findings of the report into three different thematical groups. (1) Definition of terms related to regulation 883/2004, (2) The Circular of the National Insurance Act before and after the implementation of regulation 883/2004 and (3) The timeframe and a lack of competence. I will therefore go through the three categories before discussing them in light of previous literature.

4.3.1 Definition of terms related to regulation 883/2004

In chapter one of regulation 1408/71 the domicile of a person is defined as "one's usual place of residence" while a stay is defined as a "temporary stay". With the replacement of regulation 883/2004 the terms of "domicile" and "stay" remains the same in the Danish version, but the Norwegian version defines a "stay" as "temporarily residence" instead of a "temporary stay". The Circulars chapter one of both Regulations gives a definition of "domicile" while there is no guidance to interpret the definition of a "stay".

This definition of the term "temporary stay" which Norway changed to "temporarily residence" after the implementation of regulation 883/2004, is important because ever since Work Assessment Allowance was established as a social cash benefit in 2010, the National Insurance Act §11-3 have stated:

> *"By this chapter, a term for the rights to receive Work Assessment Allowance is that the member is staying in Norway.*
> *Benefits can still be received if the member is receiving medical treatment or is participating in a work-related measure according to the work- and welfare-management law §14a.*
>
> *A member can also receive benefits according to this chapter in a limited period during a stay in a different country, if the stay is compatible with the agreed condition/activity, and the stay is not an obstacle to the institutions follow-up and control"*

The new definition created a conflict between the National Insurance Act and the regulation 883/2004. It states that a limited period during a stay in a different country is fine, but when there is no guidance to interpret the definition of a "stay", then there is also no limit to how long you interpret a "temporary stay" to actual be. Norway then changed the meaning of the word "stay" in regulation 883/2004 to "temporary residence", allowing the definition of "a limited period of stay/temporary residence" to be the deciding factor within the National Insurance Act, deciding whether you are eligible to export this cash benefit to a different country. With this in mind, it is important to know that if you apply for WAA, a basic term is that you have to be a member of the Norwegian National Insurance Act. If your residence is outside of Norway, then you are usually (certain exceptions exists) not a member of the National Insurance Act in Norway.

However, on 1. January 2018 the Circular of the National Insurance Act was adapted so that WAA could be received for a period of up to 4 weeks per calendar year and the member must submit an application of approval ahead of the travel abroad. Thus, the definition of a limited period of a "stay" was limited to 4 weeks. With this adaptation it is also interesting to note that this framework does not even mention any difference in the region of the country where the member seeks to travel. It does not state that there is any difference between an EU/EEA country and any other country. On 1. January 2018, the Government also changed the conditions for receiving WAA. Instead of having to be a member of the National Insurance Act for three consecutive years before being eligible for WAA, the sitting Government decided to set the entry at five consecutive years, tightening the terms.

4.3.2 The Circular interpreting the National Insurance Act before and after the implementation of regulation 883/2004

EEA law dictates the outcome, yet the policy in Norway is that you must stay in Norway to receive WAA. The Circular interpreting The National Insurance Act §11.3 was the same under regulation 883/2004 adopted in 2012 as it was for the regulation 1408/71. This Circular clearly states that if there is conflict between national and EEA-law, the EEA agreements dictates the outcome. Yet the Circular also states a demand of staying in Norway if a member seeks to be eligible for this cash benefit. The reason being that NAV must follow up that member and make sure that this individual receives the right benefit and work-related activity at any time. If not, the member does not meet the requirements for receiving such cash benefit. With the exception being if the member receives medical treatment, work-related measures or if it is a limited period of stay in a different country.

On the 23. November 2018, an edit of the EEA Circular was made. NAV's internal revision of the EEA scandal points out that this change was a clarification of the text and would not bring materiel changes. The clarification states that to be able to receive WAA in a different EEA country, the receiver must make contact with the visiting state to facilitate necessary follow-up and control. And there is no point in doing so if the visiting period is of a shorter stay. Short term stay such as an vacation would therefore fall outside of article 21 and thus, the National Insurance Act and Norway have the rights to regulate social cash benefits (WAA) as they see fit, as long as it does not discriminate.

Throughout the implementation of both regulations there is a lack of clarity of which framework to follow. On one hand the law is interpreted as one should follow EEA-law, yet there is a contradicting notion where the internal law of member-states is the leading one. This makes it difficult for caseworkers to apply the law (interpreted by the directorate with the Circular) in practice. The definitions of short term stay and the lack of distinction between an EEA region and any other foreign region is significant factors when applying the rules by an intertwined set of international and national law.

Finally, On 9. November 2019, there is an adaptation in article 21 of the regulation 883/2004 in the Circular related to the National Insurance Act. This adaptation clarifies the fact that a receiver of WAA, usually have the right to keep their benefit during any stay in an EEA-country, regardless of the duration of the stay. Still, the given terms for receiving such benefits must be met.

It is worth mentioning that these changes clarifying how the legal framework is supposed to be correctly interpreted, was made after the internal assessment of what went wrong regarding NAV's EEA-scandal.

4.3.3 The timeframe and a lack of competence

Reports, parliament messages and legislative processes before and after 2012, have discussed the notion of receiving various social benefits while staying abroad. The consensus being to limit the export of social benefits when discussing settling or moving to a different country. The National Insurance Court confirmed this consensus in verdicts up until 2017. NAV as an organization is closely connected to politics and a social benefit such as WAA is a dynamic cash benefit. This means that when the political landscape

changes, there is a good chance that NAV's caseworkers must study a new set of rules as the winds blow in the direction the sitting Government wants it to.

The report confirms that between the year 2012 and 2017, there was raised several concerns about how NAV practiced cases about temporary stay in a different country and EFTAs surveillance agency also started to ask questions about the practice in 2017. None of these concerns would be taken seriously enough to change the misguided practice. Yet, in June 2017, the National Insurance Court makes its first ruling against NAV's practice and still, the following year was filled with mixed verdicts, leaving the question of what practice to follow unanswered. At this point in time, we start to see a change in the attitude towards the seriousness of the misinterpreted use of article 21 in regulation 883/2004. At the end of 2017, NAV paid attention to the National Insurance Court's new use of article 21 and how "short term stay" was defined by the court. NAV's appellate body disagreed with their correct way of interpreting article 21 and put together a taskforce meant to help resolve the issue.

In July 2018, the taskforce delivers the assessment to the directorate. They ask for an explanation of the interpretation of the regulations article 21 and suggests that temporary stay in foreign territory is to be kept out of the regulation. This is where the Directorate used suspiciously long time to answer and by the end of 2018 the National Insurance Court states that they are thinking of bringing some of the cases forth to the EFTA-court and this is when the Directorate gives the issue more attention. Then the Ministry is connected to the issue and shortly after, instructions to change the practice of temporary stay in a foreign country, so that "short term" visits abroad is also considered a part of the regulation is given. But it wasn't until the end of June 2019, that the Directorate had finally updated the memo and circular to fit the right practice.

What stands out regarding knowledge and competence is how time-consuming it was. Not only to change the practice, but even acknowledging that there was a malpractice at all. When discussing this slow process, it is relevant to point to a lack of effectivity within both the organizational and political sphere. In the internal report about the EEA-scandal, NAV states that the Directorate lacks depth and knowledge in the coordination of EEA and the National Insurance Act. Some have an expertise in EEA and some in NAV, but a coordination of the two would become a hard nut to crack. Then it is relevant to ask the question of why the thousands of caseworkers and the different departments. The very fact that NAV did not separate EEA countries from other regions of the world

4.4 Discussion of NAV's internal assessment of the EEA scandal

During this chapter I will discuss the analysis of NAV's internal report on the EEA scandal in light of previous literature on the subject. I start with discussing the report findings using Graver's theory of "room for manouevre" and how the report proves how Norway used this as an active strategy. I will then explain why the strategy was used, as I connect it to the NOU (2012) report and compares the government's plan of strategy from 2012 and how it developed the relationship between WAA and the coordination with the EEA. Moving on, I touch upon the lack of competence and discuss how the internal report of NAV also supports Graver's aspect of a contradicting notion. By doing this I will also discuss NAV's willingness to loyally fulfil the national policy.

4.4.1 Why Norway and NAV ran straight into the arms of an EEA scandal

As I mentioned in the first paragraph of chapter 4.3, something so simple as the definition of the term "stay" have caused a big headache. I included the fact that the Danish language and version of the wording means a "temporary stay", while the Norwegian Government took the freedom of changing the meaning from a "temporary stay" to a "temporary residence". When you have the power to define words, you have the power to bend the wording of the rules. Baudenbacher (2019) calls this the root of all evil, while Graver also calls it necessary. To break it down simple, if the terminology in the regulation 883/2004 refers to a stay as a "temporary residence" the regulation and the article 21 of this regulation is simply removed from the relevancy of the National Insurance Act §11-3 and it is left to the National law of Norway to determine how long a temporary stay is, and so they did. 1. January 2018, the Norwegian Government adapted the law so that WAA could be received for a period of up to 4 weeks per calendar year and the member had to apply for approval ahead of the travel abroad. Graver talks about the fact that EU law gives the national authorities room for protecting public policy, public security or public health and other legitimate aims of overriding importance. This is what he calls "The room for manouevre" and calls this strategy a challenge from a legal security perspective, as using the room for manoeuvre can threaten the EEA rights given to the citizens, because it is politically desirable. In a way, Graver contradicts himself as he also states that the strategy is also both natural and necessary. Where national solutions are desirable, the authorities should not renounce it on the basis of a misconception that they are not free. The question then becomes, who is it most desirable for? The Norwegian state have clearly found it necessary to try and limit the export of cash benefits, but it has been shown through this scandal it was most certainly not beneficial for the Norwegian population. The government decision to put national law over EEA law took the EEA rights from the very citizens it was supposed to protect.

When seeking answers to why the state chose to tighten the right to social benefits and punishing the citizens in the process, I will circle back to the NOU (2012, p. 485) report. The report gives two reasons as to why the coordination of social security in the EEA have become increasingly important for the Norwegian state. One is the expansion of the EU in 2004 have created a lot more movements across the border to find work, mainly immigrants from Eastern Europe coming to Norway for work. The second is that Norway have seen an increase in export of social benefits, mainly to Spain. That is Norwegians staying abroad keeping the cash benefit they have gained in Norway. NOU (2012) points to a study by the Welfare and Migration Committee which indicates that the welfare-state was created in a period where there was significant less movement across borders and thus, reduced control over access to social benefits might create new issues when it comes to the welfare-state's design, incentives, trust and legitimacy with the futures population (NOU, 2012, p.487). Graver also concludes in a similar manner when he speaks about the EEA scandals consequence, as he says it has shown us the weaknesses of a trust-based system (Graver, 2019). The difference between the two, is that the Welfare and Migration Committee warned us in 2012 about the dangers of not tightening the control over access to social benefits. Referring to the dangers as issues when it comes to the welfare-state's design, incentives, trust and legitimacy with the futures population. Graver on the other hand, points out that the exact opposite has happened, as the trust-based system has failed the Norwegian citizens as the administration has gone from being a caretaker of legal security to seeing it as their job to test the legal boundaries (Graver, 2019). The findings of the Welfare and Migration Committee proposed an answer to the dangers laying ahead (back in 2012). A two-sided strategy to

strengthen the sustainability of the welfare-state within the EEA-market was proposed: 1) Prevent the growth of social dumping as social dumping increases the risks of bad health and the need for social benefits and 2) increased focus on activation and qualification, and at the same time shift the focus more away from cash benefits and towards services and benefits which is place-bound and thus not exportable. These two strategies link up with the NOU (2012, p. 485) report that identifies (1) that more immigrants are working in Norway, thus earning the rights to various social benefits and (2) more and more Norwegians are exporting cash benefits to foreign countries (especially Spain). The NOU (2012, p.488) also gives an alternative strategy which consists of tightening the social benefits for everyone. It would either be done by reducing the levels of benefits or by increasing the requirements of when a receiver is eligible for a cash benefit. I will argue that the Norwegian government conducted a mix of these strategies, based on how WAA developed between 2012 and 2019. Now, by analyzing NAV's internal report on the EEA scandal we can see some of the measures taken by the government and what consequence they had.

First, I want to point out that an effort to tighten the eligibility for cash benefits was made as the government decided to increase the number of years you have to be a member of the National Insurance Act to receive WAA. It was increased from three to five years, making it more difficult for people moving to Norway to receive WAA. Secondly, there was an increased focus on activation and qualification, and at the same time a shift of focus to move more away from cash benefits and towards services and benefits which is place-bound and thus not exportable. The internal report by NAV proves this as the National Insurance Act §11.3 points to this: "*By this chapter, a term for the rights to receive Work Assessment Allowance is that the member is staying in Norway".* The same law points out that a member of the National Insurance Act may receive WAA during a temporary stay in a different country, as long as it complies with the agreed conditions/activities planned for the benefit receiver. WAA is designed to help its receiver to come back to work and activities might include health treatment or specifically designed work trials. Such planned activities are usually set in Norway, with the exception of treatment outside of Norway.

It is worth mentioning that the Welfare and Migration Committee are especially focused on how the welfare state should be equipped to deal with the increasing number of working immigrants arriving at Norway and to prevent social dumping. Reading the findings, you get the feeling that this is to become a priority. This has also been an important argument against the EEA agreement in the political aspect and even though social dumping still exists, tightening social benefits for all is beneficial for the welfare state, even if it takes the EEA rights of free movement away. As the political consensus have always been to limit exports of social benefits, it is rational and easier to argue that Norwegians must protect the welfare state by keeping the tax-payers money inside the country. This is what a zero-sum game is. One actor must lose for the other to win. Baudenbacher (2019) compares this to Donald Trumps "America first" strategy and connects this to Norway's self-given right to execute the "room for manoeuvre" strategy as they please. Baudenbacher (2019) argues that it is irreconcilable with the principle of loyalty as laid down in Article 3 in the EEA. A government which instructs its administration to pursue national interests to the extreme in the application of international law explicitly or implicitly accepts that it may breach its international obligations. As Graver argues, the loyalty of the administration and NAV as an organization lays with the national policy.

Baudenbacher (2019) and Graver (2019) both agrees that the lack of competence when it comes to EEA law in Norway is consistent. The very fact that the Norwegian government, NAV and the Directorate did not manage to acknowledge the difference between a third country and an EEA member-state is a statement to the lack of competence Graver and Baudenbacher agrees upon. After the misinterpretation was discovered and focused upon, the law was re-written and now separates EEA countries from third countries and you do not have to apply to NAV to keep your rights of receiving WWA when you travel to an EEA country any longer.

The internal report of NAV also supports Graver's aspect of a contradicting notion. The official NAV report states that reports, Government bills and legislatures before and after 2012, have discussed the notion of receiving various social benefits while staying abroad. The consensus being to limit the export of social benefits when discussing settling or moving to a different country. The very same report also mentioned that the Circular initially states that if there is conflict between national and EEA-law the EEA agreements dictates the outcome. Yet the Circular also hold on to the demand of staying in Norway if a member seeks to be given the rights to the cash benefit WAA. This is double talk as Graver calls it, and an impossible task to complete. He continues to argue with the fact that the consequence of this, became a strong willingness to loyally fulfil the national policy. This willingness to loyally fulfil the national policy was strong enough to make NAV not abandon the practice even when the Social Security Tribunal announced that the practice was illegal. NAV's own analysis of the EEA debacle substantiates this by acknowledging the fact that The National Insurance Court (Social Security Tribunal) emits its first ruling against NAVs misinterpreted practice in June 2017. NAV informed the directorate for the first time in November 2017 about this and was still disagreeing with the fact that EEA law is to be the dominant factor. NAV then put together a taskforce looking into the issue and raised their concerns to the Directorate. The taskforce asked the Directorate to explain the interpretation of article 21 in regulation 883/2004 and NAV doubles down on their believe in leaving out temporary stay in foreign territory out of the regulation. After getting the Directorate's attention the Ministry was connected to the issue shortly after. In February/March 2019 the Ministry concluded that temporary stay should be included in article 21. Up until this, NAV was a firm believer of putting the national law first when dictating temporary stay. It was not until the Directorate and the Ministry caved and realized that limiting exports of a social cash benefit in such a way would be impossible to continue, that NAV also changed its position.

4.4.2 Conclusion

The disputed term "room for manoeuvre" is the root for all evil if we listen to Baudenbacher (2019). There is no doubt that the Norwegian government have used this strategy as an alternative to further coordination of EEA law and Norwegian law (National Insurance Act). The findings in the internal report on the EEA scandal certainly indicates that the government have taken the liberty to change the definition of words so that the National Insurance Act could be followed over the EEA agreement. In that case, Baudenbacher was right.

We can see an interesting outcome by comparing the policy changes made in the department of WAA with the facts presented in the NOU (2012). The findings indicate an opposite effect of what they thought would happen back in 2012. The NOU (2012) report gives the impression that the government had to tighten the legal framework for social benefits to secure the trust of the Norwegian people in the future. Comparing this to the internal report on the EEA scandal which show us the development of WAA through the

years after the NOU (2012) report, the pattern is that the social benefit was in fact tightened. Back in 2012, they were under the impression that this would prevent future problems, not create them. What really happened was that national policy was put ahead of EEA rights, ending with the punishment of Norwegians exporting cash benefits to EEA countries.

The internal report of NAV also supports Graver's aspect of a contradicting notion. The official NAV report states that reports, Government bills and legislatures before and after 2012, have discussed the notion of receiving various social benefits while staying abroad. The consensus being to limit the export of social benefits when discussing settling or moving to a different country. This is incompatible with the fact that the Circular of the National Insurance act also state that if there is conflict between National and EEA law, EEA law is to be followed.

5. Analysis and discussion of the interviews

In table 1, 2 and 3 (included in the attachmentse) I have coded the interviews by doing a text-close coding as Tjora (2013, p.184) calls it. These codes are closely related to the inductive methodological framework, as these codes are gathered from the specific empirical data generated from the interviews. I have generated 30 different codes from the three interviews and gathered the codes I found relevant to my thesis into four groups. I have thus categorized the many codes into four categories, leaving out the codes without relevancy. I have identified four themes from the transcripts of the interviews, (1) lack of training, competence, and resources (2) change in attitude towards the EEA, (3) slow internal processes and (4) more equipped for the future.

5.1 Discussing the EEA scandal

The purpose of coding and categorizing the empirical data is to create an overview, making it easier to sort out relevant data and to discuss it with already existing literature. This is exactly what I aim to do in this chapter. Systemically I will discuss each category and compare the data with the theoretical literature extracted from the literature review.

5.1.2 The lack of training, competence, and resources is a factor to consider.

From a legal perspective, Graver (2019) and Baudenbacher (2019) agrees over the fact that there exists a significant lack of competence around EEA law within the Norwegian legal system. Graver states that the EEA scandal was due to ignorance of EEA law and Baudenbacher goes as far as to say that EEA law education must be made mandatory for prospective lawyers and judges. And it is most important that Norwegian universities and the Bar to require that new entrants to the profession are properly educated and equipped to identify, consider, and argue points of EEA law before all courts. Baudenbacher's view is that this is to be considered a long-term solution to Norway's deficit in EEA competence. During this section, I aim to discuss the data collected from interviewing Maria, Beatrice and Carl. I will discuss how there is a clear difference in the lack of training, resources and competence before and after the EEA scandal. Discussing these point of views I will put it in context of the literature by David Friman (2014) Carl Baudenbacher (2019) and Hans Petter Graver (2019).

Now, Baudenbacher and Graver connects the lack of competence mainly to the legal institutions and I argue that NAV plays an important role within Norway's legal system, as it enforces the National Insurance Act and denies or grant rights on its behalf. Therefore, it matters who is controlling the outcome and how this person have developed competence and knowledge through training and education. When asking my interviewees about how they were trained regarding membership cases and in EEA related matters, I spotted a pattern. The necessary training and education on EEA questions became important once the EEA scandal was publicly known but stagnated shortly after. Interviewee one (Maria) stated that she was involved with intense EEA training:

> *we have had some training in those cases right after the EEA-scandal, right before we were moved to the department of unemployment benefits. We then had a thorough training session about membership and the EEA-rules. We had different joint workshops. We also had different training modules online, which was mandatory, if you did not do it, you would get thousands of reminders and e-mails about it. They were intense, some of the modules took up to two hours to finish.*

Maria gives the impression of an organization seeing the importance of educating their workers and filling the gap in the EEA knowledge. As Maria said, they would get frequent reminders and emails about the importance of finishing the training. But if we compare Maria's answer to the other two interviewees, we get a different story. When asked about processing membership cases and training related to those, Beatrice said:

> *Well, you come over those cases sometimes, so I asked for help, but I was told to learn it myself. The coworker with the most experience on the field gave me some pointers on what to look for. Other than that, it has been learning by doing and asking many questions.*

When comparing Maria and Beatrice's answer, you get two caseworkers with entirely different prerequisites for processing cases in relation to membership and EEA questions. The third interviewee confirms the lack of training as he (Joseph) said this about how NAV prepared him for cases related to membership and EEA:

> *There has been no comprehensive training on that area. Most of the time, you just find such a case and then you ask someone if you don't know how to do it. We also lean on the Circular to collect information about how to solve these cases.*

When comparing these three answers, it is important to distinguish between how long the interviewees have worked for the department of WAA. Maria, which have been a part of the intense training modules have worked at the department of WAA since before the EEA scandal was publicly known. Both Beatrice and Joseph were assigned to the same department in August 2021, almost two years after the EEA bomb exploded in the lap of NAV. This is also reflected in the answers in which they give. Maria followed the journey of NAV's EEA scandal very closely as she became a part of the department right before the scandal happened, and clearly noticed a change in priority when dealing with the EEA. Beatrice and Joseph joined the team recently and have not heard a word about any EEA mandatory training. In their work-related life at the office, they only know that if you want to learn or work on membership and EEA related cases, the initiative must come from themselves. It is almost as if the EEA scandal is yesterday's news and further actions to educate the employees at NAV in EEA matters have dropped on the list of priorities.

David Friman (2019, p.58-62) expresses that his experience within the landscape of NAV, is that caseworkers use their time to learn and get updated on the rules and laws instead of being more open minded and flexible in relation to the rules. And that these limitations are created due to the many cases that must be discussed and processed. Therefore, the focus is to finish each case as fast as possible and the laws no matter how wrong they might seem, is the quickest way to get there. In other words, Friman blames the lack of resources for creating a system not compatible with the benefit receiver's best interest.

After analysing NAV's internal report, one of their suggestions to why an EEA scandal was made possible, was the fact that there is not enough continuity in the working process, as there are multiple different people connected to the same case at different times. This is because there exists a lack of capacity in the different NAV departments. Too many activities compete for the attention regarding their issue, therefor the effort surrounding the case lacks depth and concentration. The report states that most of the involved parties of the EEA scandal have had other demanding tasks which was perceived as more important during the spring of 2019. This supports Friman's notion of a lack of resources or "capacity" as NAV names it.

When Maria was asked why the EEA training has stopped, she said that different issues became more important:

> *We had to be finished with the training module before January 2020. Then shortly after, the Covid-19 pandemic came, and EEA related matters were put on hold. and I think that's why the training modules for EEA related cases was put on hold. Most of our department were transferred to unemployment benefit as the pandemic created a huge pressure on that department. So, the training for EEA was not finished and there was barely anyone left in the WAA department.*

This confirms the idea that resources are scarce and that issues are competing for NAV's attention. Graver (2019) pointed out that, this time the lack of judgement was due to ignorance of the EEA law. Another time judgement may be weakened by a national disaster, a moral panic, or a populist constituency. Both the answers from the interviews and the analysis of the internal NAV report on the issue indicates that other factors play's an important role in allocating resources and deciding what is to be high on the agenda. In this case, it seems as if the EEA scandal had its fifteen minutes of fame in the months leading up to the Covid-19 pandemic and have not been allowed the attention it deserves since.

Looking at this from Graver's point of view, it supports his theory of a political aspect creating a contradicting notion. Marie confirms that the leadership within NAV laid out intense mandatory EEA training, meant to be implemented for all caseworkers. But as soon as another issue arose, the "mandatory" training was suddenly forgot about, and new staff members did not get the chance to experience or learn through this no longer "mandatory" training. Graver also explains that this creates a strong willingness to loyally fulfil the national policy and in relation to this, I would argue that that caseworkers at NAV loyally follows the national policy by accepting that learning EEA law is no longer a concern. Both Beatrice and Joseph had to seek out the learning process of EEA rules and was still told that the best way to learn was to figure it out on their own.

On the other hand, Baudenbacher connects the issue of loyalty to a macro-perspective. The argument her, is that a government which instructs its administration to pursue national interests to the extreme in the application of international law, explicitly or implicitly accepts that it may breach its international obligations. In this case, by allocating most of the resources of WAA to another department in time of crisis, it has accepted that the EEA issue is put on hold indefinitely. Baudenbacher uses the analogy of a football coach. When a coach tells his players to play as hard as possible, to the limit of what is allowed, he cannot wash his hands in innocence if one severely injures an opponent. In the same way, if a new caseworker at the department of WAA makes a mistake in processing membership/EEA related cases, the coach cannot wash his hands in innocence.

As lack of training and resources exits within an organization, there is bound to be instances of a lack in competence. As I initially stated, Baudenbacher sees the long-term solution as mandatory EEA law education in universities.

Baudenbacher goes as far as to say that EEA law education must be made mandatory for prospective lawyers and judges. And it is most important that Norwegian universities and the Bar to require that new entrants to the profession are properly educated and equipped to identify, consider, and argue points of EEA law before all courts. Baudenbacher's view is that this is to be considered a long-term solution to Norway's deficit in EEA competence. Comparing the educational background from the three interviewees, Marie has a degree in law and administration, Beatrice in political science and Joseph in European studies. All three are now working as caseworkers for NAV, applying the National Insurance Act and sometimes the EEA agreement. When asked about prior knowledge about EEA, two out of three told me that they have received little to no information through their education on the matter. The only one with above average knowledge of the EU and the EEA was Joseph who has a master's degree in European studies. Seeing that there are almost no mentions of EEA law in political science or law and administration education in Norway is surprising and might very well be a factor in the competence deficit. When asked if there exists an EEA deficit in their department, Maria argues that there is less competence-deficit now than before the scandal:

> *There is less of a lack of competence now after the EEA scandal, as we were forced to learn how to correctly apply the law. With such cases it is better to take more time and do it right, rather than reject an application or do something wrong. Before the scandal we trusted the National Insurance act, but now we are more aware that we might have to look it up in the EEA agreement or discuss the case with a colleague with more knowledge.*

Maria's arguments are valid, but this also brings a contradicting notion ones again. Friman (2019, p.58-62) argues that the management in NAV have created a culture where production is key, and that the law is an important tool to achieve this. This contradicts with Marie's statement that it is better to take some time and do it right rather than doing anything wrong. Marie also implies that the trust in following the circular for the National Insurance Act is weakened and that discussing cases with coworkers or looking at the EEA circular have become more relevant. When the interviewees were asked if Friman's theory applied to their own department, all three firmly disagreed with this idea. Yet, before the EEA scandal it was a willingness to loyally fulfil the interpretation of the National Insurance Act. In Maria's point of view this has changed, but when asking the other two interviewees we get a different picture ones again. Beatrice had this to say about a lack of EEA competence:

> *Well, it is the courts job to decide how the legal framework is interpreted, and not really NAV. But we probably should have discovered the mistake earlier. It is common sense that it should be possible to export benefits as there is free movement of people and a lot more. I think NAV tend to follow orders without asking questions and are not critical enough. I don't know, but I think so. I have often though, "this is a bit weird". It is a lot that don't make sense all the time, it might be because of a lack of competence both in NAV and in general. But it could be because of how we prioritize and allocates resources.*

In opposite to Maria, Beatrice thinks NAV follow orders without asking questions and are not critical enough. Joseph on the other hand, gives an answer which confirms both Maria and Beatrice's thoughts:

> *In general there is without a doubt a lack of competence when it comes to the EEA in Norway. Looking at the EEA-scandal as an example, here we had an entire court system misinterpreting an EEA law. I feel that sets the standard in a way. Specifically at the department of WAA I want to say that we manage, because the Circular is changed, and the rules are clarified. Although I think it would be an advantage if more people in NAV went through EEA-training. When we teach ourselves, we are dependent on help, or we can potentially end up doing a costly mistake.*

Joseph acknowledges that there is a lack of competence on EEA rules but relates this deficit to Baudenbacher's school of thought. When looking at the bigger picture the deficit of competence is systemically rooted and go deeper than the individual caseworker at NAV. Yet, Joseph also confirms that the department of WAA manages well now that the Circular is adapted and corrected. Still, he points to the fact that a threat feeding the issue of a deficit in competence, is that caseworkers are not receiving properly training and education in dealing with cases related to the EEA. Much like Baudenbacher's analogy of a football coach who is responsible for the actions of their players, Joseph acknowledges that when the leaders give the responsibility to the individual caseworker to learn themselves the rulebook, mistakes might occur. Once again, I must point out that Maria, Beatrice and Joseph's views reflect their experiences within NAV and as Maria points out, she was forced to learn how to correctly apply the law. Both Beatrice and Carl were never forced to do so, as they must ask for help and act on their own if this is to happen. The difference is that Maria has been a part of the department through the EEA crisis and through the Covid-19 crisis. The other two developed their knowledge as caseworkers during the pandemic, when NAV had shifted the focus towards another crisis.

What stands out based on these findings, is Baudenbacher's take on NAV's assessment of the EEA scandal. He states that if the task is limited to investigating the NAV scandal, it will not even recognize the true reasons for the Norwegian EEA malaise, as it is a systemic problem (Baudenbacher, 2019). Thus, the lack of competence, training and resources poses a threat to future cases processed within the intersection of the National Insurance Act and the EEA agreement. NAV seems to lean on a short-term plan in solving their issues, and it seems that new issues are showing up left and right. Yesterday's issue is therefore forgotten until the house is once again on fire. So far, the findings suggests that the interpretation of article 21 in regulation 883/2004 is changed, and the caseworkers working at the department of WAA before the scandal was known is educated in how to correctly apply the law, while the newly added caseworkers are expected to learn the rules on their own, now that the Circular is correctly defined. There is absolutely no guarantee that another problem might be discovered and if it does, it will not be acknowledged before the mistake is already made. This is because of the time and resources it takes to train and educate, not only caseworkers within NAV, but an entire legal system, as well as other actors living on the border of national policy and the EEA agreement. A systemic problem needs systemic remedies (Baudenbacher, 2019).

5.1.3 A collective defensive attitude towards the EEA.

Graver (2019) explains the EEA agreement as something extraordinary and that the implementation of EEA law into national law was an extraordinary event which has destroyed the judgement of the actors of the legal institutions. While Baudenbacher (2019) is under impression that the Norwegian EEA-DNA consists of an irrational collective defensive attitude of scholars, politicians, bureaucrats, and judges against EEA law, which from the outset was perceived as foreign and threatening. This is what have prevented relevant actors in Norway from acquiring the necessary knowledge and skills about the EEA (Baudenbacher, 2019).

The result from interviewing Beatrice and Joseph seems to support Baudenbacher's school of thought. Beatrice states that there exists a fear in dealing with EEA and membership cases:

> *I think that caseworkers are extra careful when dealing with membership and EEA related questions and cases. Some is very scared to touch membership cases, and then there are those who have read up and are willing. At our department, people don't want to touch membership cases. Only a few who think it is interesting wants to process those cases. So, a bit of both. People are afraid of new headlines in the paper, I guess.*

The EEA scandal got a lot of attention in the media in the months after the issue was released and this might have had an unfortunate effect on the future willingness of caseworkers to process cases linked to membership and EEA rules. Joseph also supports the notion of a skepticism amongst caseworkers when dealing with membership/EEA cases:

> *It seems like there is a general skepticism when it comes to caseworkers wanting to process membership cases. But I have to add that with the interpretation of the law as it is now, membership cases are relatively easy as membership are exportable and transferable to any EEA country. But those cases might take some time. I have experienced that people in the office are under the impression that membership cases are difficult, and caseworkers avoid them.*

Joseph suggests that there most definitely exists a skepticism when it comes to caseworkers wanting to process membership/EEA cases, even as the cases in themselves are not very complicated (although time-consuming). Joseph's experience is that caseworkers at the office of WAA is under the impression that membership and EEA related cases are difficult, and therefore avoid them. This seems irrational, but the fact that these cases are time-consuming might be a contributing factor to this skepticism. Based on the earlier statements pointing to the number of cases each caseworker must process every day and a lack of resources, I can not disregard this as a potential deciding factor. Yet both answers coincide with Baudenbacher's theory, and it seems as if an irrational collective defensive attitude of bureaucrats towards EEA exits within the department of WAA in NAV. With that said, Maria did not seem to share this view as she expressed that more are willing to take on membership/EEA specific cases now than before the scandal.

5.1.4 Slow internal processes in NAV exposes the lack of EEA competence

I have previously mentioned that Graver characterizes the EEA agreement as an "extraordinary element", he also says that this extraordinary element has created a reality of trust without control, which have highlighted the weaknesses of a trust-based system when NAV goes from being a caretaker of legal security to seeing it as their job to test the legal boundaries (Graver, 2019). As the EEA scandal unfolded in NAV, the internal processes leading up to the scandal have created some backlash and it is not the first time NAV have received criticism for their lengthy problem-solving efforts. The findings from the internal report on the EEA issue by NAV pointed to several instances where the Directorate were unnecessary slow in their response once NAV started to ask important questions. When asking the interviewees about the internal processes in NAV every interviewee touched upon this. Maria says that it took some time to establish effective contact with the Directorate:

> *I have heard that it took some time to get feedback in the beginning. And feedback from the Directorate was important to solve cases touched by the EEA-scandal. But after a while our department leader had access to someone above her, that had a direct line to the Directorate, then we got feedback a bit faster. There was also a group within the Directorate which was focused on the EEA issue and answered question. It took some time to get answers to the difficult questions. But most of the time, I felt that we got answers faster because the issue was so sensitive, and it was important to solve it quickly.*

Maria emphasizes that feedback from the Directorate was crucial to solving cases touched by the EEA scandal and that it took some time to establish effective communication, but when the line was established, they got answers from the Directorate faster. The interesting part with this answer is how the line to the Directorate was established. She says that the Department leader of WAA at that time knew someone who had a direct line to the Directorate. Even when NAV and the Directorate made such a big mistake such as the EEA scandal turned out to be, NAV had to go through an indirect line to get answers. Beatrice also finds the internal process challenging and slow:

> *When they have figured it out, it happens quickly. But we know so little about the road from when it becomes a problem to the implementation of change. If I speak up about a potential issue I speak to the subject coordinator, then he will talk with other subject coordinators and then it will possible be brought upwards in the system. Then the question lies at the Directorate for a while, until they have time to figure out the issue. But we, after we bring a possible issue forth, we do not know what is going on or when it will be resolved. Not until we ask about it again. Political processes are often slow.*

Beatrice calls out the slow internal process and signals that there is very little insight into the process from when a caseworker rings the bell about a potential issue to when change is implemented. This is nothing new as caseworkers at NAV are used to this slow political process, yet it must be frustrating seeing a mistake knowing you won't be able to do anything about it. In the end, waiting for answers from the Directorate does not hurt the caseworker. The caseworker applying the legal framework gets paid the same amount of salary no matter how the law is interpreted, it is the benefit receiver who gets stuck with the bill, quite literally as it turned out in the EEA scandal. When discussing

why the Directorate uses so much time, Joseph points to an interesting fact and circles back to the lack of competence:

> *Sometimes changes are made with unknown consequences. But in my experience, it takes too much time. With the EEA scandal, NAV only adopted the verdicts given by the courts in Norway as far as I know. And I don't think NAV have the right to override this process. So, there is a high probability that there is a lack of competence on EEA law within the Courts and the Directorate in relation to the National Insurance Act. Then we are back to the fact that there is a lack of knowledge about the EEA. And that has consequences for us.*

Joseph circles back to the idea that NAV have a strong willingness to loyally fulfil national policy and as the caseworkers have this loyalty, the problem of misjudging the law becomes unavoidable as they trust that the Circular of the National Insurance Act is correct. The Internal report made by NAV themselves, point to the fact that some people in the Directorate had certain expertise in the field of the EEA, but not enough knowledge about NAV and its practices. Others was well educated in NAV's practice but lacked EEA-competence. A better combination of knowledge in both the EEA and NAV could have led to the discovery of the malpractice sooner (NAV, 2019). The lengthy internal processes may very well be linked to the fact that the Directorate do not possess enough competence. When the Directorate have proclaimed themselves incompetent in dealing with the coordination of EEA and national policy, then a reality of trust without control becomes apparent and this shows us the weaknesses of a trust-based system. What Graver accurately points out, is that this highlights the weaknesses of a trust-based system when the administration goes from being a caretaker of legal security to seeing it as their job to test the legal boundaries (Graver, 2019). In this case the Directorate takes it upon themselves to re-define the interpretation of regulation 883/2004 and put every caseworker in NAV down the wrong path, leading up to the EEA scandal in 2019.

5.1.5 NAV is better equipped for the future but have no long-term solution.

The misinterpretation of the EEA became a big problem for NAV and the Norwegian people, another time judgment may be weakened by a national disaster, a moral panic, or a populist constituency. This combined with a government that sees it as its task to implement a defined policy and to challenge legal boundaries, things can go wrong again said Graver (2019). Therefore, I asked the interviewees if NAV was more equipped to prevent such a scandal in the future and what efforts needs to be done to make them so. Maria was very positive to the idea that NAV have learned from their mistake:

> *Yes, I think so. We have had more training and most of the mistake came from the local offices asking us to stop certain WAA cases because the benefit receiver was staying in a different country. We now know what to look for if that happens now. We are more aware that we must ask if the person actually breaks the condition of any planned activity that follows when you receive WAA. We can't just stop the payment if no obligation is breached. I feel that we have become better at that. Well, we and the local offices.*

If we isolate Maria's answer specifically to the EEA scandal that already happened, it becomes very rational to conclude with the fact that you don't make the same mistake

twice. With the Circular and the National Insurance Act being updated to the correctly intended purpose, gives the caseworkers at NAV the tools they need to process membership and EEA related cases, yet Baudenbacher argues that the problem is far from solved if you isolate the problem to that one EEA scandal, as it is a systemic issue and the impact of the EEA is extremely wide. Both Beatrice and Joseph give pointers to improvement towards the future. Beatrice is missing more transparency in decision-making processes:

> *More transparency and possibilities to ask critical questions. Not just having to sit there and accept every legal framework. Discuss more and be a part of the implementation process, instead of just applying the already implemented rules. More caseworkers should have the opportunities to have a say, as they are the ones seeing how the implemented rules are affecting the people.*

Beatrice's answer reflects a caseworker who no longer possess the strong willingness to loyally fulfill the national policy laid out by the Directorate. The trust between the two is broken as there is proved to be a lack of competence on certain areas. The people close to reality, caseworkers who apply the rules every day flew to close to the sun and got burned as they trusted that the Directorate had enough competence, when they clearly did not. The deficit in EEA competence within Norwegian institutions seems to be a large onion with multiple layers. Joseph is also under this impression:

> *We interpret the law based on the Circular and how the directorate have decided how it should be interpreted. I would strengthen the Directorate. And I feel that we need a thorough review and educate the Norwegian people on how the EEA-law should be coordinated with Norwegian law. After what I have learnt from the university, I feel that many Norwegians have the perception that EEA does not matter that much since we have sovereignty and the freedom to decide to follow national law. But the EEA scandal have shown us that this is not the case.*

Joseph's answer mirrors Baudenbacher's long-term solution to Norway's EEA problems. First, he acknowledges that the issue is not isolated to one institution or one person, but it is rather a systemic issue as there are multiple institutions with the same competence deficit which affects each other. Joseph also suggests that many Norwegians have the perception that the EEA does not matter that much since we have sovereignty and the freedom to decide to follow national law. This reflects Baudenbacher's theory of an irrational collective defensive attitude towards the EEA amongst the Norwegian people. The irony being that the EEA became the safety net as the EEA scandal has shown the Norwegian people that the Norwegian sovereignty does not place ahead of the international commitment of the EEA agreement. Even though it was learned the hard way.

5.2 Conclusion

First, the findings from these interviews indicates that there is no significant training of caseworkers on the issue of EEA and membership. When the scandal was well known, NAV put together some measures in form of mandatory training modules and online courses, but these stopped once the Covid-19 pandemic came around. The educational background of the interviewees also suggests that there is a lack of training in EEA law in both political science and law and administration courses at Norwegian universities. The findings suggests that the training, resources and competence creates a domino effect, where the lack of resources makes the management allocates resources in a prioritized

order when crisis is at their doorstep. Because of the lack of resource, the training in one area is sacrificed to compensate for the problems in another area, thus ending with a lack of necessary competence. Therefore, it is a chance that EEA competence has been sacrificed until another crisis happens and so goes the vicious circle.

Secondly, two out of three interviewees states that the general attitude towards membership and EEA related cases in the department of WAA is of a skeptical nature. I cannot disregard the possibility that the lack of resources and the fact that these cases are simply time consuming might be a potential factor. Yet both answers of Beatrice and Joseph coincide with Baudenbacher's theory of a collective defensive attitude, and it seems as if an irrational collective defensive attitude of bureaucrats towards EEA exits within the department of WAA in NAV.

Thirdly, the slow internal processes when someone uncovers a mistake of law within NAV is troublesome because it shows us the weaknesses of a trust-based system where the liability is separated. The Directorate's responsibility is to interpret the law and create a legal framework. The caseworker's job is to follow this legal framework and at the same time do what is best for the benefit receiver. The findings from the interviews indicates that they no longer trust this process and wants to have more insight into the decision-making process. The Norwegian model is a trust-based system and when incompetence is discovered in multiple layers, the system breaks down. This is what Graver means when he suggests that the administration has gone from being a caretaker of legal security to seeing it as their job to test the legal boundaries. Graver also suggests that next time, it might be because of a natural disaster, a moral panic, or a populist constituency that makes the government act in a wrongful manner. My argument is that the EEA scandal is extraordinary as Graver puts it, but the scandal is centered around a misjudgment of EEA law and there are multiple factors leading up to this. These factors are closely related to Baudenbacher's school of thought, where the problem is rooted as a systemic issue. As Graver tries to generalize an EEA issue as a political and judiciary problem translatable to other issues (natural disasters, moral panics or populist constituency), he disregards the negative and collective attitudes specifically targeting the EEA agreement and the EU. Thus, the findings have indicated that the slow internal processes have contributed to uncover and highlight incompetence on the EEA area infecting an entire organization.

Finally, the data indicates that the specific misinterpretation of article 21 in the 883/2004 regulation will not happen again and thus the caseworkers at NAV is better equipped dealing with membership and EEA related cases. Still, multiple factors such as a lack of training, competence, resources and slow internal processes mixed with a collective defensive attitude are still looming and there is no guarantee that another mistake will not occur in the vast intersection of the EEA and the National Insurance Act.

6.0 Findings

I have tried to answer the question: can the EEA scandal can be explained by internal conditions and/or systemic problems?

What the findings from both the interviews and the internal EEA report clearly agrees upon, is that the lack of EEA competence within NAV, the Directorate and the legal institutions exists. Therefore, it seems irrational to not give the issue a systemic character. As I have compared the findings to both Baudenbacher (2019) and Graver (2019) I cannot say that my findings does not fit either of the explanations. Isolated, the EEA scandal stands out as a product of a political mismanagement of the EEA law Norway have agreed to follow by entering the EEA agreement in 1994. And as Baudenbacher (2019) points out, the coach cannot be innocent if tells his players to play tough and an opponent gets hurt. Although it seems that proper measures have been put in place to reverse the EEA scandal, the systemic character given to the issue by Baudenbacher (2019) and the findings of my research, Norway is far from declared healthy when it comes to its EEA-DNA.

The NOU (2012) report on Norway's relationship with the EU shows us that the government back in 2012 warned us about the ramifications of an uncontrolled flow of benefits across borders and advised us to tighten the social benefits for all. This was to secure stability and trust in the system as foreign workers became a larger threat. The internal report by NAV gives an indication that the politicians took this advice. The irony being that the people this was supposed to protect was the ones having to pay the price. A collective defensive attitude towards EEA and national law coordination needs to be given more attention and the long-term plan will be to integrate more training into our legal institutions and into our educational system. As of today, this seems to be missing.

6.1 Further research

If I were to research this issue further, it would be interesting to dive deeper into the full length of cooperation between the government, the Directorate, and the courts. By interviewing caseworkers in NAV I have sort of started with a bottom-up approach, and caseworkers at NAV indicates that they know very little about the process within the Directorate. So to truly get the full insight, I would have to infiltrate the political system and dynamics further up.

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Appendix 1: The interview-guide

As I am preparing to conduct in-depth interviews it is appropriate to sketch out an interview-guide to structure the interview in the best possible way. When structuring the interview, I divide the interview into three sections. First, I start off with some easy-going question to warm up the informants. These are easy, concrete questions, such as age, tasks, responsibilities in the workplace and all the questions that does not require a lot of reflection. The next section consists of the core questions of the interview, this is where the informant is invited into reflection. This is where the informant can go in depth with different topics related to the research questions. The last section consists of closing questions to lead the attention away from the heaviest reflections, which normalizes the situation between informant and interviewer.

A. Opening questions
    - What age are you?
    - What education do you have?
    - What was your major?
    - How long have you worked for NAV and how long have you been with the department of Work Assessment Allowance at NAY?
    - What are your main tasks regarding the work you do today?
B. Leading up to the countless hours of EEA related work.
    - What made you want to work in the Norwegian Labour and Welfare Administration?
    - Before 2019, what where your tasks and assignments at the office?
    - Can you tell me about the process of how you were trained in relation to working cases of membership-questions and temporary stay in a foreign country?
    - How would you define your knowledge about the EEA? (The four freedoms)
    - In your opinion, is there a lack of knowledge/expertise in EEA-related questions? (In general, or specifically within NAV)
    - Why did you want to work on the cases related to the EEA-scandal?
    - Did you choose/wish to work on these cases or where you asked by the management to do so? (If so, why you?)
C. The EEA-scandal (NAV-scandal) – 2019-2021
    - Since the EEA-bomb dropped in 2019, what changes have it brought regarding your responsibilities at the office?
    - What are your experiences of the organizational changes since the issue became public in 2019, and how you have handled it? (Was it difficult? Was it a learning experience etc?)
    - Can you say something about the specific cases you worked on? What was the main mission and the biggest challenges?
    - How many cases are we talking about? (How many was actually touched by the EEA-scandal)
    - The internal process between the Directorate the Ministry and NAV is time-consuming and might not resolve issues efficiently. In your reflection, how have you experienced that the leadership and "linjeveien" have handled the issue of the EEA-scandal?
    - Is there a lack of competence, communication or a collective understanding of how to deal with the EEA?

- What could have been different?

D. The future of NAVs EEA-competence
    - Reflecting over your last two-three years at NAY, what measures will be or have been taken to ensure that such an error is not to happen again?
    - Have you experienced specific changes towards the attitude of handling cases related to the EEA legal framework?
    - Do you think that the department of Work assessment allowence could have done something to uncover the error earlier?
    - In your opinion, what is the root of the problem?
E. The end of the EEA-scandal
    - Are you finally done with processing cases touched by the EEA-scandal?
    - Would you say that NAV is better equipped in dealing with "folketrygdloven" in relation to the EEA agreement today than three years ago?
    - What have you learned from processing all those mishandled EEA cases that you might bring with you in future cases?
F. Closing questions
    - First came the EEA-scandal, then came the Covid pandemic. After a couple of hectic years, are you looking forward to going back to pre-scandal/pandemic NAV?
    - What is the most important thing you have learned from working on resolving the EEA-scandal since 2019?

Appendix 2: Table 1, 2 and 3

Table 1.

Coding	Interview 1 (Table 1)
Bachelor's degree in law and administration	I: What type of education do you have, and what did was your major? M: I have a bachelor's degree in law and administration, and I wrote my thesis about women as leaders and how they have experienced a glass ceiling in their careers.
Trained in membership cases and the EEA.	I: Have you worked on membership cases? M: Sometimes, we have had some training on those cases right after the EEA-scandal, right before we were moved to the department of unemployment benefits. We then had a thorough training session about membership and the EEA-rules. Other than that, I don't' have a lot of knowledge or experience with those cases. If I come across an exciting case, I treat it myself. I: How was the training process executed? M: We had different joint workshops. We also had different training modules online, which was mandatory, if you did not do it, you would get thousands of reminders and e-mails about it. They were intense, some of the modules took up to two hours to finish.
Sending EEA membership questions by old school mail	I: When you started in NAV did you have the same mandatory training? M: Not when it came to EEA cases, only a little. Before, when we had questions about a benefit receiver to a different EEA country, we had to send it by mail. So we had to get training in how to do that. Now it is done online on the computer. I: Now that it is digital, do you have the training for that as well? M: We were supposed to. It was a pilot project where only a few had access to send requests to EEA countries. But all were eventually supposed to know how. But we have not heard anything more about it.
Not much about EEA law	I: Did you learn anything about the EEA in school? M: No, we did not learn a lot about the EEA. We talked about it briefly, but that was mostly related to tax regulations. We did not have a class where the specific topic was the EEA. I: How would you describe your own knowledge about the EEA? M: I don't know. There is something there. I have picked up something along the way by working with membership and EEA cases.
Lacking less competence	I: In your opinion, is there a missing understanding or competence in EEA related cases? M: This is a bit difficult, because there is less of a lack of competence now after the EEA as we were forced learn how to correctly apply the law. With such cases it is better to take more time and do it right, rather than reject an application or do something wrong. Before the scandal we trusted the National Insurance act, but now we are more

	aware that we might have to look it up in the EEA agreement or discuss the case with a colleague with more knowledge.
The EEA training was paused because of another crisis.	I: Have membership cases become higher prioritized after the EEA scandal? M: We had to be finished with the training module before January 2020. Then shortly after, the Covid-19 pandemic came and EEA related matters were put on hold. The Ones working directly with reversing the cases touched about the EEA-scandal then was moved to unemployment benefits because of the pandemic. When NAV had control over the massive demand for unemployment benefits, I became one of the caseworkers working with fixing the wrongly handled EEA cases. I: So the resources had to be allocated differently as a consequence of another crisis? M: Yes, and I think that's why the training modules for EEA related cases was put on hold. Most of our department were transferred to unemployment benefit as the pandemic created a huge pressure on that benefit. So the training for EEA was not finished and there was barely anyone left in the WAA department.
Took some time to get answers	I: How do you think the internal processes in NAV have handled the EEA scandal? M: I have heard that it took some time to get feedback in the beginning. And feedback from the Directorate was important to solve cases touched by the EEA-scandal. But after a while our department leader had access to someone above her, that had a direct line to the Directorate, then we got feedback a bit faster. There was also a group within the Directorate which was focused on the EEA issue and answered question. It took some time to get answers to the difficult questions. But most of the time, I felt that we got answers faster because the issue was so sensitive, and it was important to solve it quickly.
If someone took more initiative	I: What could have been done different? M: Well, it is known that individuals did question the practice in an earlier stage. If there had been someone who took more initiative and investigated these concerns a lot earlier. This is the only thing I can think of, as it is decided that the misinterpretation of the law dates back until 1994.
We have to find creative solutions	I: Are caseworker in NAV to dependent on the rules when processing cases? M: No, I don't think I agree with that. At least not in our department. We have meetings and workshops where we bring up cases and are willing to listen to our coworkers and discuss. Sometimes we might have to much of a tunnel vision and dependent on the legal framework, but all we need is to listen to a coworker who speaks up and argue that we have to exercise some common sense and be creative for the benefit receiver. I think we are good at finding that balance.

I feel that we have become better	I: Is NAV better equipped at dealing with The National Insurance Act in relation to the EEA agreement now, than it was for three years ago? M: Yes, I think so. We have had more training and most of the mistake came from the local offices asking us to stop certain WAA cases because the benefit receiver was staying in a different country. We now know what to look for, if that happens. We are more aware that we have to ask if the person actually breaks the condition of any planned activity that follows when you receive WAA. We can't just stop the payment if no obligation is breached. I feel that we have become better at that. Well, we and the local offices.

Table 2.

Coding	Interview 2 (Table 2)
Bachelor's degree in political science	I: What education do you have, and what was your major? B: I have a bachelor's degree in political science. My major was statistics and I wrote my thesis about women in leadership roles.
I have thought myself	I: Have you worked on membership cases, and if so, did you choose so yourself or did the management ask you to? B: Yes, I have. Well, you come over those cases sometimes, so I asked for help but I was told to learn it myself. Then I just took initiative to learn it. I: How was the learning process? B: The coworker with the most experience on the field gave me some pointers on what to look for. Other than that, it has been learning by doing and asking many questions.
I do not remember any classes teaching us about the EEA	I: Did you learn about the EEA during your time in university? B: No, it was mostly about implementing Norwegian law and I can't say I remember that I had any classes that taught anything about the EU and the EEA. I don't think I would have chosen those classes anyway.
People are more careful where they step.	I: Has there been a change of attitude in regards to processing membership cases since the EEA bomb dropped in 2019? B: I think so. People are more careful where they step. More ask themselves "do we dare answer this question?". I do think that caseworkers are extra careful when dealing with membership and EEA related questions and cases.
People don't want to touch membership cases.	I: Are caseworkers more enlightened and therefor more willing to process such cases, or are they more afraid of doing something wrong? B: I think a bit of both. I think some is very scares to touch membership cases, and then there are those who have read up and willing. At our department, people don't want to touch membership cases. Only a few who think it is interesting, wants to process those cases. So a bit of both. People are afraid of new headlines in the paper I guess.
When they have figured it out, it happens quickly.	I: How do you think the internal processes in NAV have handled the EEA scandal? B: It is difficult to answer. When they have figured it out, it happens quickly. But we know so little about the road from when it becomes a problem to the implementation of change. I: How is the process from when you as a caseworker discovers that something is wrong with the legal framework you are implementing in reality? B: I speak to the subject coordinator, then he will talk with other subject coordinators and then it will possible be brought upwards in the system. Then the question lies at the Directorate for a while, until they have time to figure out the issue. But we, after we bring a

	possible issue forth, we do not know what is going on or when it will be resolved. Not until we ask about it again. Political processes are often slow.
It is often too fast forgotten.	I: What could have been different? B: More channels to influence. Just reaching out to someone who might know how to bring attention to the issue/question. There are no open channels where we as caseworkers can follow up issues we discover. And it is often too fast forgotten.
The Courts job to interpret the legal framework	I: Is there a lack of competence dealing with membership and EEA cases within NAV? B: Well, it is the courts job to decide how the legal framework is interpreted, and not really NAV. But we probably should have discovered the mistake earlier. It is common sense that it should be possible to export benefits as there is free movement of people and a lot more. I think NAV tend to follow orders without asking questions and are not critical enough. I don't know, but I think so. I have often though, "this is a bit weird". It is a lot that don't make sense all the time, it might be because of a lack of competence both in NAV and in general. But it could be because of how we prioritize and allocates resources.
There was a lockdown and we have not heard about the EEA issue since	I: Do you think the pandemic have affected NAV's attention to the EEA issue? B: It was announced that NAV have misinterpret the law all the way back to 1994 and straight after the pandemic happened. Another crises arrived, then there was a lockdown, and we have not heard about the EEA issue since.
We have good balance between common sense and the law.	I: Are caseworker in NAV too dependent on the rules when processing cases? B: It depends on the leadership. But I feel that this is not the case in our department. We have a good balance between common sense and at the same time act within the legal framework. But I have also experienced that in other offices within NAV where caseworkers are very strict and eager to finish cases. Then it is easy to reject someone based on the legal framework, rather than spending extra time looking for that creative solution. With lack of resources and time, someone becomes cynical to get their job done in time. Especially at the local offices where they are often understaffed.
Discuss more and be a part of the implementation process.	I: What measures should be taken to reassure that an issue such as the EEA one doesn't happen again? B: More transparency and possibilities to ask critical questions. Not just having to sit there and accept every legal framework. Discuss more and be a part of the implementation process, instead of just applying the already implemented rules. More caseworkers should have the opportunities to have a say, as they are the ones seeing how the implemented rules are affecting the people.

Table 3.

Coding	Interview 3 (Table 3)
Master in European studies	I: What type of education do you have, and what did was your major? J: I have a master's degree in European studies, and I wrote my thesis about how Brexit had an effect on Sweden's role within the EU council.
I am helping the department of sickness benefits.	I: What are your main tasks in the office? J: I process new applications for WAA, which includes a bit of everything. I am also helping out in the department of sickness benefits, as there is a bit of a crisis there now.
Not a lot of training	I: Have you worked with membership cases? J: Yes, now and then a case like that crosses my desk. Then you have to calculate how many years they have been a member of the National Insurance Act, and if its difficult I send the assignment to someone else. I: How were you trained to solve those cases? J: There has been no comprehensive training on that area. Most of the time, you just find such a case and then you ask if you don't know how to do it. We also lean on the Circular to collect information about how to solve these cases.
It would be an advantage if more people in NAV went through EEA-training.	I: Is there a lack of competence on the EEA in NAV and Norway? J: Yes, in general there is without a doubt a lack of competence when it comes to the EEA in Norway. Looking at the EEA-scandal as an example, here we had an entire court system misinterpreting an EEA law. I feel that sets the standard in a way. Specifically at the department of WAA I want to say that we manage, because the Circular is changed, and the rules are clarified. Although I think it would be an advantage if more people in NAV went through EEA-training. When we teach ourselves we are dependent on help, or we can potentially end up doing a costly mistake.
Membership cases are difficult and caseworkers avoid them.	I: Do you think there has been a change in attitude in regards to processing membership cases at your department? J: It seems like there is a general skepticism when it comes to caseworkers wanting to process membership cases. But I have to add that with the interpretation of the law as it is now, membership cases are relatively easy as membership are exportable and transferable to any EEA country. But those cases might take some time. I have experienced that people in the office are under the impression that membership cases are difficult and caseworkers avoid them.
High probability that there is a lack of competence on EEA law within the Courts and	I: How do you think the internal processes in NAV have handles issues such as the EEA scandal? J: Sometimes changes are made with unknown consequences. But in my experience, it takes too much time. I have worked in a tech-business earlier and we always had a reverse button if the changes were bad. We get handed a legal framework which is not adapted to reality yet, because the consequences are not known yet, it is thus far theoretical. I: But with the EEA scandal, the problem was that the old routine was the problem?

the Directorate	J: That is a good point, but if we reflect upon that, NAV only adopted the verdicts given by the courts in Norway as far as I know. And I don't think NAV have the right to override this process. So there is a high probability that there is a lack of competence on EEA law within the Courts and the Directorate in relation to the National Insurance Act. Then we are back to the fact that there is a lack of knowledge about the EEA. And that has consequences for us.
Do what's best for the benefit receiver.	I: Are caseworker in NAV too dependent on the rules when processing cases? J: Based on where I work, I must disagree. I disagree because of course our job is to follow the legal framework and we need to meet certain standards of production, but the most important aspect is to help the benefit receiver. We go the relatively great lengths to make that happen in some instances. If we are in doubt, and a case can go both ways, do what's best for the benefit receiver, that's what we are taught.
Educate Norwegians in EEA law	I: what efforts should be done to reassure NAV and Norway that another EEA scandal does not happen? J: We interpret the law based on the Circular and how the directorate have decided how it should be interpreted. I would strengthen the Directorate. And I feel that we need a thorough review and educate the Norwegian people on how the EEA-law should be coordinated with Norwegian law. After what I have learnt from the university, I feel that many Norwegians have the perception that EEA does not matter that much since we have sovereignty and the freedom to decide to follow national law. But the EEA scandal have shown us that this is not the case.
The roots go deeper	I: What was the root for the EEA issue? J: That the EEA was misinterpreted. But I think the roots go deeper than that. At a political level I think that there has been no effort or will to grasp what the EEA agreement really mean for Norway. I think that's were the roots lay. It's such a politicized issue.