Optimising the EU legal framework to facilitate cross-border liability of international labour supply

A comparison of Belgium’s, Germany’s and the Netherlands’ cross-border liability regimes for subcontracting chains

Kilian Heller PhD Candidate
Kilian.heller@maastrichtuniversity.nl
05.04.2018
# Table of Content

- Introduction
- The ”Problem” and Relevance
- Choice of Countries
- Research Question
- Research Approach
- Preliminary Findings of the Comparison
- Case Study
- Normative Suggestions and Legal Analysis
- Current Status Quo
The "Problem" and Relevance

• Increasing cross-border mobility
  - Worldwide and especially within the EU

• Dealing with more than one jurisdiction
• Employee and employer relationship
• Subcontracting and hiring out of labour
• Much room for Abuse:
  – Pyramiding
  – Cash payment arrangements
  – False self-employed independent contractors
  – False payroll tax returns or no tax returns
  – A1 social fraud structures
  – Re-hiring from a different firm

• Officially approximately 2 Mio workers concerned – an understatement?
• Posting periods in average not longer than 98 days
The "Problem" and Relevance

• International vs. European Law
  – Enforcement Directive in 2014
    • Art. 12 – optional sub-contractor liability
  – Proposal 1996 Posted Worker Directive Amendment
  – Proposal 2004 Basic Regulation Amendment
  – Proposal to establish a European Labour Authority
  – BEPS

• The “holy” trinity of employment
The Onion
An Onion has layers – so do wage payments!
Choice of Comparables

- Geographical Proximity
- All three states have domestic subcontractor liability
- Language
- Co-influenced legislation
- All three states receive and send a significant number of workers
Choice of Comparables

Number of posted workers issued by sending and receiving MS, 2014

Choice of Comparables


Figure 3: PDs A1 for posted workers received by the receiving Member States, breakdown by classification of the sending Member State, 2015

Source: Administrative data PD A1 Questionnaire 2016

* No data reported by UK, LI, NO and CH.
Research Questions

• **Overall:** How can the current international and European legal framework be changed to facilitate cross-border liability for social security and wage tax in international supply of labour situations?

• *Sub question 1:* Where do cross-border third party liability regimes diverge between the Netherlands, Germany and Belgium?

• *Sub question 2:* What major obstacles do all of three cross-border liability regimes face?
Research Approach

- Comparing the legal functions to make the best apple juice.
Research Approach

• Various functional comparative methods employed
  – Functional Method
  – Law in Context Method
  – Historical Method
  – Common Core Method

• To identify commonalities, divergences and limitations of the liability regimes
Preliminary Findings

- Short Overview of the different liability systems
- Comparison of each system
- Do they all face one fundamental problem?
- The problem of who has the competence to collect social security contributions and wage taxes?
Faculty of Law – Department of Tax Law
Faculty of Law – Department of Tax Law
Normative suggestions

• How can the current legal framework be optimised in particular on an EU and international level?
• Should there be unilateral measures?
Thank you for your attention!