

# Artificial corporate entities and the circumvention of labour standards

**Jan Cremers - Tilburg Law School**

# Background

Developments since the mid-1990s:

- Implementation of Single Market gives absolute priority to freedom of establishment and freedom to provide services.
- Although creation of companies is still a national matter, once established, corporate legal entities can provide services across the whole EU.
- Harmonisation of company law shifted to a national agenda dictated by competition - company law has become a production factor.
- In parallel, a massive externalisation/outsourcing of cross-border recruitment of labour started.

# Commonalities in complex cases

- The use of artificial arrangements: legal corporate entities claiming to engage in economic activities that do not reflect the operational reality.
- Dispersed competences hinder effective tackling.
- Incubators advise on avoidance opportunities and provide 'substance' and regulatory compliance.
- Labour relations and employer responsibility are blurred.
- Ownership is denied; the use of go-betweens.
- Bankruptcy is widely used as an effective means to lead compliance control into a dead-end street.

# Artificial corporate entities

- Artificial entities are set up for circumvention purposes or financial manoeuvres, or are kept dormant for future use.
- The entities generally exist only on paper and are often used for mala fide activities.
- Features are multiple companies having the same address; no physical existence at the given address; high ticket transactions inconsistent with the business of the firms; and rotational transactions with no apparent legitimate business group.

# Business models

The methods consist of well-established and designed business models, often thought through in all legal details, which lead to distortion of competition based on wage costs with genuine companies that comply with the legal and conventional frame.

- Savings on direct wage costs;
- Savings on employers' costs;
- Savings on social security contributions;
- Savings on income tax, turnover tax and corporate income tax.

# Advertising

## *What Is A Ready Made Company?*

A ready-made company has never done any business, however it is registered in the Commercial Register and it has its own Company ID No., but no business history. All of our ready made companies **are ready for sale and for immediate use.**

## *The Benefits Of Purchasing A Ready Made Company?*

Ready made companies may have been registered for a number of years, and this shows longevity, **making your business appear more established than it might be.** This is great for increasing trust with new or prospective clients **as it gives the impression that you have been trading for longer than you have.**

# The incubators

- Organise the establishment of the legal entity
- Arrange a company registered office address
- Take care of registration duties
- Open banc accounts
- Draw (fake) proceedings of general assemblies or shareholder meetings
- Assist in accounting matters
- Suggest substance
- Overall, they guarantee the facade that is necessary to keep the artificial arrangement upright (all 'perfectly legal').

# How to tackle?

Item	a. Social security	b. Working conditions	c. Freedom of establishment	d. Company law	e. Taxation	f. Sectoral regulations
	Regulations 883/2004 and 987/2009	Posting of workers Directive; Enforcement Directive; Revised Posting Directive	Services Directive	A series of 12 EU Directives and respective revisions, codified in Directive (EU) 2017/1132	Parent-daughter	Transport; Agency work  Others?
Genuine undertaking defined						
Fraudulent activity defined						
Registration criteria and/or obligations						
Compliance control and enforcement mechanism						
Sanctioning						