Was gut ist, kommt rasch – aber was rasch kommt, ist nicht immer gut

Jan Cremers – Salzburg - 22 April 2016
Background

At the start of the internal market the idea was: company law has to create a level-playing field for companies that want to act all over Europe.

After the mid-1990s the paradigm changed: competitiveness and deregulation of company law became the new ideology and, as a result, fighting the administrative burden and easy access to entrepreneurship became the key slogans.
Freedom of establishment

The emphasis in the area of company law is:
• Deregulation of the business environment
• Introduction of competitive legal pluralism
• Facilitating the entrance to entrepreneurship
• Lowering of the criteria of establishment (f.i. capital)
• Efforts to ease the mandatory rules (f.i. registered office and head office in the same country in the case of the SE)
• Infringement of cases that identified ‘barriers’ for the free establishment
Consequences and risks

No serious analysis what this all means for:

• Creditors
• Workers
• Distortion of competition

In a cross-border context:

• Risks of tax evasion
• Circumvention of social security
• Employment relations blurred
• Threat for workers participation
• Non-respect for labour standards
• Fake ownership and evasion of liability
Question marks

- Very often, there is a lack of transparency
- No serious assessment of the side-effects!
- A field of business consultants and incubators that promote artificial/fake economic activities
- Letter box companies and other evasion practices
- Next to fiscal engineering, trade unions and workers are more and more confronted with social engineering
- No real evidence of gains and wins....
Forms of circumvention

- Cross-border recruitment via (temporary) agencies.
- Sham self-employment.
- Shift to other industries (regime shopping).
- Manipulation with free establishment and country of residence.
- Labour relation is blurred through the use of letter-box companies.
The use of cross-border intermediates

Limited abroad

Invoice

Labour contract

undertaking

worker