SUMMARY OF PhD DISSERTATION

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ADVERSE EFFECTS OF POSTING OF WORKERS IN THE EU: SUBCONTRACTING CHALLENGES, LEGAL DEBATES AND PROPOSED SOLUTIONS

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Table of Contents

PART I – Summary of the Research

1. The research problem and its context

2. Relevance of the research

3. State of research

4. Hypotheses, research questions and variables

PART II – Description of the Conducted Research, the Methods of Collecting Material and the Exploration and Use of Resources

1. Methodological framework

2. Evaluative criteria applied in the research

3. Selection of the comparator jurisdictions

4. Sources and materials used

5. Research limitations

6. The course of the research and the structure of the dissertation

PART III – Summary of the Scientific Results and Their Possible Practical Application

1. Evaluation of the hypotheses

2. Proposals for the legislation and practical application of the results

PART IV – List of the Publications Related to the Thesis

PART I – Summary of the Research

1. The research problem and its context

The development of the internal market of the European Union over the last three decades has shown how legal instruments introduced as technical tools to facilitate economic activity can gradually evolve into one of the most sensitive areas of the legal and social environment. The posting of workers is one of the most prominent examples of such development. What began as a functional mechanism for the cross-border provision of services became, over time, an area in which fundamental principles of the Union meet and collide: market freedoms on the one hand and the protection of workers' rights on the other. That collision is additionally emphasised where posted workers are involved in subcontracting arrangements.

The dissertation therefore begins from a clearly formulated but insufficiently researched challenge in legal doctrine: the current EU legal framework cannot ensure the effective, consistent and enforceable protection of posted workers when they are involved in complex subcontracting chains. The challenge is neither purely normative nor purely practical, but arises precisely at the point of their intersection, in the space where formal legal rules meet the dynamic and often non-transparent forms of work organisation of the contemporary economy. At its core, it is a situation in which a legal system that is developed and multilayered does not fully keep pace with labour market transformations. Institutes shaped within the framework of traditional, relatively simple employment relations are more difficult to align with the challenges posed by globalisation, market liberalisation and the broadening of subcontracting business models. In such structures liability becomes fragmented, and the formal employer is often not the same subject that controls the working process or holds real economic power.

The research task is accordingly not reducible to a simple lack of legal provisions. EU law on the posting of workers has been developed gradually and today contains several mechanisms aimed at preserving a minimum level of protection. Those mechanisms, however, often remain at the level of a formal standard, while their practical efficiency depends on a number of additional requirements. The legislation exists, but its operative power in certain situations remains limited. The research problem can be articulated more precisely in three mutually interconnected layers.

The first layer concerns legislative fragmentation. Directive 96/71/EC, Directive (EU) 2018/957 and Directive 2014/67/EU have set minimum standards but have left Member States broad discretion in their implementation. That approach was politically acceptable at the time of its introduction, but in practice it produced significant differences across national systems, in particular as regards liability in subcontracting chains. The consequence is that the level of protection of a posted worker depends on the Member State in which the work is performed, which hardly corresponds to the idea of a single market accompanied by minimum social standards.

The second layer concerns the structural complexity of subcontracting arrangements. Subcontracting is not only an organisational tool but also a mechanism for distributing risk. As the number of levels in the chain increases, liability for respecting labour rights is gradually shifted towards the bottom of the chain, where the less financially solvent and more short-term actors are located. Where subcontracting is used as an abusive business model, structures such as letterbox companies or intermediaries that formally assume the role of employer while lacking a real economic or organisational basis become involved. In such circumstances liability rules lose their functional purpose, because they are directed towards subjects that are unable to fulfil their obligations.

The third layer concerns deficiencies in law enforcement. Even where a legislative basis for protection exists, its effectiveness depends on the capability of the worker to prove and enforce the right. In the context of posted workers this is particularly problematic because of the cross-border nature of the work, language barriers, limited access to information and the uncertainty surrounding the worker's legal and working status. Court protection, even when formally available, is often ineffective in practice, while administrative control mechanisms cannot respond in a timely manner to complex and evolving subcontracting structures.

The combination of legislative fragmentation, structural complexity and enforcement weakness constitutes the specificity of the research problem. The dissertation therefore reaches beyond individual legal institutions and opens a broader discussion about the capacity of labour law to adapt to changing market conditions, examining the challenge through the interplay of theoretical background, legislation, business structures and enforcement mechanisms. The problem addressed is neither marginal nor sector- or Member State-specific; it is a structural challenge of the contemporary European labour market that requires both normative and practical questioning of the existing legal framework.

2. Relevance of the research

The importance of the topic lies not only in its legislative complexity but also in its everyday reality in the functioning of the EU labour market and in the direct consequences it has for workers and employers. At the heart of the challenge is a gap between the formally established EU legal framework, which seeks to secure the freedom to provide services and labour mobility, and its capacity in practice to protect workers within complex subcontracting chains, especially in cross-border situations.

For posted workers the challenge has a concrete and often existential dimension. Their legal status is generally marked by multiple forms of precariousness: they are outside their own legal and social environment, often without full information about their rights, and at the same time they may be included in multilayered subcontracting chains in which identifying the liable subject is difficult or almost impossible. In such circumstances, violations of basic labour rights, such as the non-payment of wages, are not merely individual irregularities but symptoms of structural weaknesses of the system.

The relevance of the research is not limited to the level of individual protection. Non-harmonised levels of protection and the fragmentation of national solutions create conditions for regulatory arbitrage, in which business subjects are directed towards the legal systems offering the least restrictive conditions. What is threatened is therefore not only workers' rights but also the principle of fair competition, since competitive advantage is achieved in a manner that often circumvents the basic rules of labour law. The protection of posted workers' rights in subcontracting arrangements is consequently also a question of maintaining the integrity of the internal market.

At the level of legal doctrine, the relevance of the research is highlighted by the fact that this is an area in which the existing theoretical and normative framework is not fully adapted to modern forms of work organisation. Although posting of workers and subcontracting have each been analysed as separate institutions, their mutual interaction has been only briefly touched upon, examined long ago or left unexplored. The dynamic character of the field reinforces this.

Political attention to the topic has been intense; the divergence of national approaches, in particular in relation to the most recent amendment and to enforcement mechanisms, has directly affected the level of protection of posted workers depending on the host State in which they provide services. The European Commission's 2024 report on the implementation of PWD18 further raised the question of the effectiveness of the current framework, while the subject of subcontracting in general came to the fore in the intensive discussions of 2025 and 2026 within the Quality Jobs Roadmap and Act, becoming potentially relevant to the scope of posted workers as well.

The relevance of the research finally stems from its dual function. On the one hand it contributes to the development of legal doctrine by systematically analysing a topic that has so far been fragmented and insufficiently examined. On the other hand it has a pronounced pragmatic function, since its recommendations and conclusions bear on the shaping of future legislative and political solutions at EU level.

3. State of research

At first glance the level of research on posted workers and subcontracting chains at EU level gives the impression of a well-examined and theoretically stable area. On closer analysis it becomes clear that such development relates mainly to partial aspects of the challenge, while their mutual connection, which is the focal point of the dissertation, remains insufficiently systematically examined and often normatively unclear.

In the literature on the posting of workers the analysis is predominantly an examination of the basic tension between the freedom to provide services and the protection of workers, with emphasis on the development of secondary EU legislation and on the case law of the Court of Justice of the European Union. That literature provides a strong normative basis, but it is mostly confined to legal sources and their interpretation and leaves out the real organisational context, in particular subcontracting arrangements. In parallel, the literature on subcontracting and on the fragmentation of the employment relationship identifies subcontracting both as a key instrument of flexibilisation and as a source of systemic risk and of the transmission of liability to the lower levels of the chain; within that segment, however, workers are often viewed as part of a market phenomenon, without further examination of their specific legal position in the context of posting.

Where the literature attempts to connect the two areas, it largely remains at the level of identification. Authors recognise that the combination of temporary labour mobility and complex subcontracting structures creates space for fraudulent practices, but they rarely develop an integrated analytical framework encompassing both the legal and the enforcement dimensions of the challenge. That level of identification without systematisation represents one of the key gaps in the current state of research.

Particularly important contributions concern liability in subcontracting chains, showing that the traditional liability model, connected only to the bottom of the chain, is inconsistent with the reality of modern chains, and that isolated mechanisms rarely achieve the desired effect. Comparative analyses of national systems confirm that claim: the German chain liability model is emphasised as a system enabling effective enforcement because it eliminates the need to prove the fault of subjects higher in the chain; the Austrian system emphasises the preventive role of the State through intervention in financial flows; the Dutch system of successive liability introduces procedural logic and predictability; and the Belgian system shows how normative complexity can complicate practical application. Most of that literature nonetheless remains at the level of description and comparison, without deeper critical analysis of the actual effectiveness of the models in the context of posted workers.

A further problematic segment of the literature concerns the due diligence defence. Although the concept has been developed through international standards and is broadly accepted as an instrument of responsible business conduct, its concrete role in the labour law context and in subcontracting chains remains insufficiently developed. Some authors warn that the due diligence defence risks becoming a formal mechanism for avoiding liability, especially where it is not clearly defined in normative terms, and similar criticisms are found in analyses of the implementation of that institute under the Enforcement Directive, which highlight that non-harmonised national approaches further increase legal uncertainty.

Finally, the enforcement of EU labour law as such has been examined in depth elsewhere, most notably in a comparative study of the Dutch, German and Swedish systems and in a collective volume mapping the full range of administrative, criminal, judicial and cross-border enforcement mechanisms and framing the underlying problem as a gap between rights on paper and rights in practice. The dissertation builds on that scholarship rather than duplicating it, and directs its attention to the point at which, in the last decade, comprehensive research has been lacking: the interconnection of the applicable legal framework, liability in subcontracting chains, the due diligence defence and the possibility of limiting chain levels, specifically in the context of the posting of workers.

4. Hypotheses, research questions and variables

The research is based on several working hypotheses. The affirmative hypothesis posits that the existing EU legal framework fails to provide sufficient protection for posted workers in complex subcontracting arrangements. The negative hypothesis posits that the inclusion, in the Enforcement Directive of 2014, of obligatory joint and several liability in the construction sector with the possibility of a due diligence defence is insufficient to protect posted workers adequately in complex subcontracting arrangements within the EU. The null hypothesis states that there is no significant difference in the protection of posted workers in the EU when they are included in complex subcontracting arrangements as compared with when they are not.

The research variables include the types of liability schemes (joint and several liability, chain liability), the number of levels in subcontracting chains, the transnational component, the sectoral context, and the availability and effectiveness of enforcement mechanisms.

The main research question is formulated as follows: in what ways does the current EU legal framework, in the context of the posting of workers, ensure the effective protection of posted workers within complex subcontracting chains, and what are its key normative and enforcement weaknesses? Several interrelated questions structure the analysis. First, how is the basic tension between the freedom to provide services and the protection of workers manifested in the context of the posting of workers and of their inclusion in subcontracting arrangements? Second, in what way do the existing mechanisms, in particular the liability scheme and the due diligence defence in subcontracting chains, function in the context of posting, and to what extent do they contribute to or limit the enforcement of workers' rights? Third, which conclusions can be drawn from the analysis of national systems that have developed different models of liability for the protection of posted workers' rights in subcontracting chains? Fourth, how can those conclusions be translated into concrete legislative and policy recommendations at EU level?

The formulation of the research questions is directly connected to the working hypotheses, which rest on the presumption that the existing legal framework is not functionally sufficient, not so much because of a lack of provisions as because of their limited applicability in complex and often non-transparent market structures. The research is thereby directed towards the analysis of the relationship between the law on paper and the law in action, and towards an understanding of the real limitations of the current legal protection.

PART II – Description of the Conducted Research, the Methods of Collecting Material and the Exploration and Use of Resources

1. Methodological framework

The methodological scope of the research has been shaped by the nature of the research challenge and by an understanding of its complexity. The focus question required, first of all, a comprehensive legislative analysis, but also the capability to consider the law beyond its formal dimension. The research is consequently conceived as primarily legal-dogmatic, with the intentional inclusion of comparative and contextual dimensions.

The basis of the research is a detailed analysis of the primary and secondary EU legal framework, including the provisions of the TFEU that establish the freedom to provide services, PWD96, its amendment PWD18 and the Enforcement Directive of 2014. Special attention is given to the case law of the Court of Justice of the European Union, which plays a key role in shaping the balance between market freedoms and social rights.

It became clear at an early stage, however, that legal texts alone cannot explain how subcontracting chains are used in practice. The legal-dogmatic method has therefore been supplemented by a comparative analysis of national systems, with emphasis on those Member States that have developed specific and presumably most effective liability schemes in subcontracting arrangements. The analysis of the German, Austrian, Dutch and Belgian systems allowed not only a comparison of legislative solutions but also the identification of concrete mechanisms that in practice contribute to, or limit, the protection of posted workers in subcontracting chains. The research thereby shifts from abstract provisions to their functionality.

The research additionally includes an analysis of secondary empirical sources, such as reports and studies of competent authorities and available statistical data providing insight into mobility patterns and potential abusive practices. Those sources allowed the legislative analysis to be situated in dialogue with real market practices rather than in a vacuum. The dissertation does not include individual empirical research in the narrow sense; such research would be valuable for further deepening the understanding of posted workers' experiences, but it would require a methodological and organisational framework going beyond the limits of this study.

The methodological choice can accordingly be described as intentionally focused on the legislative dimension of the challenge, using accessible sources as contextual support rather than as primary research material. That approach permits in-depth analysis of legal institutions while requiring acceptance of its limitations: the legal-dogmatic method cannot fully encompass the everyday experience of posted workers or the many forms of informal or fraudulent practice that evade legal evidence. It can, however, identify the structural weaknesses of the legal system that permit such practices or fail to prevent them.

2. Evaluative criteria applied in the research

Since the dissertation is doctrinal and comparative rather than empirical, the recurring evaluative vocabulary of the research, in particular the terms effectiveness, best practices and evaluation, is not used in the sense it carries in quantitative social-science research, that is, as measured outcomes established through original empirical data collection. It is used as a set of doctrinal evaluative criteria, namely standards derived from the legal materials themselves and from the objectives that the EU legislature and the Court of Justice have assigned to the relevant instruments.

Accordingly, where a national liability scheme is described as effective, the assessment is made against three explicit, doctrinally grounded criteria. The first is enforcement effectiveness, understood as the extent to which a mechanism enables a posted worker to enforce an unpaid-wage claim in law against a solvent party, in particular by removing evidentiary obstacles such as the need to prove fault or knowledge. The second is deterrent effectiveness, understood as the extent to which the mechanism alters the incentives of the actors higher up the chain and encourages genuine control rather than formal compliance. The third is practical or operational effectiveness, understood as the extent to which the mechanism functions in the real conditions of cross-border subcontracting, including insolvency, the disappearance of the direct employer and the use of letterbox companies. Where the research refers to best practices or instructive models, the expression is shorthand for comparatively instructive models, that is, national solutions that perform well against those three criteria, and not for an empirically validated ranking of jurisdictions.

3. Selection of the comparator jurisdictions

The selection of Germany, Austria, the Netherlands and Belgium follows from criteria that can be stated explicitly rather than from a search for confirming examples. First, each of those Member States has developed a distinct and doctrinally mature liability model in the field of posting and subcontracting, respectively chain liability, preventive intervention in financial flows, successive liability and a mixed sectoral system, so that together they represent the principal regulatory techniques available in EU practice rather than variations on a single approach. Second, each is a significant host State for posted workers in sectors, above all construction, in which subcontracting chains are most prevalent, so that the models operate under comparable practical pressures and are genuinely comparable. Third, the four systems have each been the object of sustained scholarly and institutional attention, which permits their assessment against the criteria set out above on the basis of a sufficient body of legal and evaluative material. The systems are examined not only for their strengths but also for their limitations, including the interpretative narrowing of investor liability in Germany, the administrative complexity of the Belgian scheme, and the boundaries of each model in genuinely transnational situations. The comparison is thus intended to test, and not merely to illustrate, the argument advanced in the dissertation.

The comparator set deliberately excludes the model, associated above all with the Nordic Member States, in which the enforcement of posted workers' terms and conditions rests primarily on collective bargaining and trade-union monitoring rather than on statutory liability. That exclusion is itself methodological. First, the research question concerns the design of liability mechanisms as legal instruments, whereas the Nordic systems characteristically rely on extra-statutory, autonomous mechanisms whose functioning is contingent on a density of collective organisation that does not obtain in most Member States, so that they are less readily transposable as a harmonisation template at EU level. Second, the collective-bargaining model has already generated a substantial and distinct body of scholarship, and the constitutional limits that EU law places upon it were the very subject of the Laval litigation. The Nordic experience is therefore referred to, where relevant, as a point of contrast rather than as a further comparator.

A corresponding delimitation applies to the enforcement mechanisms examined. The research concentrates on liability schemes and on a limited number of associated instruments, namely the due diligence defence and the limitation of subcontracting-chain levels, rather than attempting a comprehensive treatment of the entire enforcement architecture. It focuses on liability because liability is the mechanism that most directly determines whether a posted worker at the bottom of a chain can in practice recover unpaid wages from a party able to satisfy the claim, and because it is precisely at the level of liability that the discretion left to Member States by the Enforcement Directive has produced the fragmentation identified as the central concern of the research. The due diligence defence and the limitation of chain levels are examined because they are the instruments most closely bound up with the operation of liability, the former qualifying it and the latter shaping the structure within which it operates.

4. Sources and materials used

The material was collected and used in several groups of sources.

The first group comprises primary and secondary EU law: the TFEU provisions on the freedom to provide services, the freedom of movement for workers and the freedom of establishment; the Charter of Fundamental Rights of the European Union, in particular Article 47; PWD96, PWD18 and the Enforcement Directive of 2014; and further relevant instruments, among them the Employers Sanctions Directive 2009/52/EC as a comparable EU model of chain liability.

The second group comprises the case law of the Court of Justice of the European Union, examined in order to trace the evolution of the determination of posted workers as service providers, the boundaries of permitted national measures and the development of the concept of minimum protection standards, including the case law of the so-called Laval quartet and subsequent judgments relevant to subcontracting and wage protection.

The third group comprises national legislation, administrative rules and implementing measures of the four comparator Member States, together with the national materials required to reconstruct the functioning of each liability model, as well as the Norwegian public procurement legislation examined in relation to the limitation of chain levels.

The fourth group comprises institutional documents and preparatory materials: the successive Commission proposals and impact assessments preceding the Enforcement Directive and PWD18, the Commission reports and staff working documents on the application and implementation of the Enforcement Directive and of PWD18, the European Parliament committee reports and opinions, and commissioned studies monitoring the posting acquis and the situation of workers in subcontracting chains.

The fifth group comprises the positions and documents of the social partners and of interested organisations, examined in order to reconstruct the political and interest-based dimension of the debate on subcontracting, and the most recent institutional developments, including the draft report of the Committee on Employment and Social Affairs, the committee vote of 3 December 2025 and the European Parliament Resolution of 12 February 2026.

The sixth group comprises the scholarly literature, used both as an object of critical analysis in the reconstruction of the state of research and as a source of doctrinal argument, and available statistical and evaluative data on posting flows and on detected abusive practices, used as contextual support.

5. Research limitations

Besides the methodological limitations related to the accessibility and nature of the data, limitations as to the scope of the research must be emphasised. The dissertation approaches the challenge primarily from a labour law perspective, while questions of social security and tax law are incorporated only to the extent necessary for understanding the phenomenon under analysis. The comparative analysis is limited to the selected Member States, identified as relevant because of their developed liability models and the intensity of posting in their practice; that approach allows deeper analysis but necessarily excludes full coverage of all national systems.

It is also necessary to avoid a simplified explanation of the limited accessibility of data on violations of posted workers' rights. Although it is true that relatively few court proceedings can be linked to the precarious position of posted workers, their dependence on the employer or the fear of losing employment, such an explanation cannot be the only or a sufficient one. The lack of case law does not necessarily mean a lack of rights violations; it often points to structural barriers to accessing justice, including language barriers, short-term residence in the host country and a lack of knowledge of legal proceedings. Relevant information on violations extends beyond case law to administrative procedures, inspection controls and sectoral analyses, but such data are often fragmented, unharmonised and hardly comparable.

Finally, the enforcement mechanisms and the political discussions in this area develop in a dynamic environment. While political priorities and legislative initiatives can change relatively quickly, the basic institutional enforcement mechanisms, such as labour inspections, court proceedings and administrative control, are more stable, even though their effectiveness varies across Member States. The research therefore proceeds with a level of methodological reflexivity, aware that its conclusions pertain to a system undergoing continuous transformation.

6. The course of the research and the structure of the dissertation

The research is presented in five chapters. Chapter 1 establishes the research context and objectives, the theoretical and methodological framework and the structure of the study, specifying the challenge, the hypotheses, the research questions and the variables, reviewing the state of research and setting out the methodology and its limitations.

Chapter 2 examines the posting of workers in the EU and its adverse effects. It situates posting within the forms of labour mobility developed in the EU, analyses the personal and legal scope of posting, traces the evolution of the determination of posted workers as service providers in the case law of the Court of Justice, identifies the essential elements and types of posting recognised in EU law and the labour standards applicable to posted workers, and concludes with an analysis of the adverse effects of posting.

Chapter 3 analyses the subcontracting phenomenon in the context of the posting of workers. It defines subcontracting and subcontracting chains, examines subcontracting in the posting context and its use as an abusive business model through letterbox companies, the misuse of temporary work agencies and bogus self-employment, illustrates the practical challenges by reference to the construction sector, and analyses the applicable EU legal framework, comprising PWD96, the Enforcement Directive of 2014, PWD18 together with the 2024 report on its application and implementation, and other relevant EU legislation.

Chapter 4 analyses selected enforcement mechanisms for preventing violations of posted workers' rights in subcontracting arrangements. It examines liability as an enforcement, deterrent and practical mechanism, distinguishes joint and several liability from full chain liability, and analyses the national approaches of Germany, Austria, the Netherlands and Belgium, each followed by a critical evaluation framework and concluded by a comparative critical evaluation. It then examines the complementary mechanisms of due diligence, including the due diligence defence system under the Enforcement Directive, and the limitation of subcontracting chain levels.

Chapter 5 sets out the policy recommendations and the conclusion. It develops two mutually interconnected directions: the amendment of the Enforcement Directive of 2014, and the assessment of a new general EU legal framework for subcontracting and labour intermediation, before concluding with the final evaluation of the research and of the hypotheses.

PART III – Summary of the Scientific Results and Their Possible Practical Application

1. Evaluation of the hypotheses

The affirmative hypothesis, according to which the existing EU legal framework does not provide a sufficient level of protection of posted workers in complex subcontracting arrangements, has been confirmed. The analyses show that the normative structure, although developed and multilayered, does not follow the dynamics of market relationships in which liability is fragmented across multiple levels of contractual relations. In those situations there is a mismatch between formally granted rights and their actual enforceability, so that the protection of posted workers is determined by their position within the chain and by the applicable normative framework rather than by universally declared effective protection standards.

The negative hypothesis has likewise been confirmed. The introduction of obligatory joint and several liability in the construction sector, with the possibility of invoking a due diligence defence under the Enforcement Directive of 2014, proved insufficient to protect posted workers effectively in complex subcontracting structures. The research shows that such a solution, accompanied by a wide scope of discretion for Member States, led to the exclusion from the liability scheme both of the most solvent subjects in the chain and of multiple labour-intensive sectors. The comparative national analysis nonetheless shows that the system can be efficient if differently structured.

The null hypothesis, according to which there is no significant difference in the protection standards for posted workers depending on whether they are included in subcontracting arrangements, has been rejected. The analysis shows that the complexity of subcontracting chains, especially in a transnational context, significantly contributes to a decline in the level of protection: the longer and more fragmented the chain, the weaker the control mechanisms and the more limited the workers' ability to enforce their rights.

The variables confirm those conclusions. The type of liability proves to be a key factor, models including chain liability offering greater protection than limited joint and several liability. The number of levels in the chain directly reduces effective protection, while the transnational component further complicates enforcement because of differing national regimes. The sectoral context cannot on its own compensate for the structural weakness of the system, and the accessibility and effectiveness of enforcement mechanisms remain significant factors in determining whether normative protection will have a real effect.

2. Proposals for the legislation and practical application of the results

The results are directly translatable into legislative and policy proposals. The primary solution advocated is not the abandonment of the existing legal framework but its serious, structural reform. The reason is not only legal but practical: the posting system already exists, has been developed through legislation and case law and is deeply integrated into the functioning of the internal market, and an attempt to replace it with a new instrument would raise new legal questions and could lead to further fragmentation if undertaken without caution. The recommendation to amend the Enforcement Directive does not stem from institutional opportunism but from the research itself, since the comparative analysis shows that functional solutions already exist and have demonstrated their effectiveness in certain contexts.

(a) Amendment of the Enforcement Directive of 2014

Article 12 of the Enforcement Directive should be amended so that the current minimal liability model is replaced by an obligatory, harmonised and broader standard at EU level, on the basis of functional rather than merely formal harmonisation. Specifically, and on the basis of the instructive models identified in the comparative analysis, the amended Article 12 should provide that, in cases of non-payment of wages, breach of minimum working conditions or breach of other basic rights of posted workers, liability may be extended throughout the chain at least up to the main contractor, with the possibility of a direct claim by the worker against that subject. That solution derives principally from the German system, which has proved successful in eliminating the main barrier to enforcement, namely the need to prove the fault or knowledge of subjects higher in the chain, and which responds to the challenges identified in the analysis of letterbox companies as disappearing subcontractors.

Article 12 should further specify the situations in which such broad liability is activated, by incorporating objective triggers already identified in the comparative analysis, such as non-payment of wages over a certain period, insolvency or disappearance of the subject, non-enforceability of a court decision, or the establishment of the presence of a letterbox company in the chain. Legal certainty would thereby be improved and the protection of posted workers' rights would cease to depend on lengthy and unpredictable court proceedings, which are one of the main barriers to effective enforcement.

The obligation should be extended to all sectors and not confined to construction, following the German and Dutch examples, since the limitation of the scheme to a single sector ignores the realities of the EU labour market and leaves posted workers in other sectors, particularly labour-intensive ones, without protection.

The Directive should further provide that the due diligence defence cannot be used as a mechanism for release from liability, in particular as regards basic working conditions and above all the right to wages. If the defence is retained, it must be strictly limited to predefined, objective and cumulative conditions encompassing not merely a formal check of documentation but consistent control of actual working conditions. Due diligence should be understood not as a defence permitting the avoidance of liability but as a complementary instrument with a preventive function that does not derogate from the basic logic of the liability system. If such a system cannot be achieved, the due diligence defence should be removed as a discretionary mechanism available to Member States.

Beyond Article 12 itself, the Directive should include new provisions securing the preconditions for effective enforcement. First, it should introduce an obligatory minimum standard of transparency in subcontracting chains, drawing principally on the Austrian and Dutch systems, requiring all subjects in the chain and in particular the main contractor to secure full and accurate information on all subcontractors and workers involved, including their identity, the duration of the arrangement, the working conditions and the payment of wages. Non-compliance should carry direct legal consequences, including stricter liability and a shift of the burden of proof from the worker to the subjects controlling the chain. Second, the Directive should permit and encourage preventive intervention in financial flows, especially in cross-border situations, which the analysis of the Austrian model shows to be of key importance in preventing the disappearance of funds before the worker can enforce the claim; at EU level this could operate through the temporary retention of wages or through financial guarantees in clearly defined risk situations, with respect for the principle of proportionality. Third, a mechanism limiting the levels of the chain could be opened to labour-intensive sectors on the basis of predefined criteria and with the participation of the social partners, in such a way that no unified model is imposed on Member States while they are enabled to introduce such mechanisms without legal uncertainty as regards the fundamental freedoms, the balance between the protection of workers and the freedom to conduct a business being preserved throughout.

(b) Design requirements for a new general EU legal framework

Where the Commission does not currently intend to revise the posting framework, the improvement of the position of posted workers in subcontracting chains can be achieved in a more timely manner only through a new general instrument. If such an instrument is adopted, the research indicates the design requirements on which its usefulness for posted workers depends. It should be conceived as a horizontal framework applicable to all sectors, with the possibility of targeted measures in sectors where the risk of violations is especially high. It should expressly cover cross-border situations, be consistent with the existing functional provisions on the posting of workers, and contain explicit links to the posting acquis, so that subcontracting rules reinforce rather than bypass the minimum employment standards applicable in the host Member State; the explicit inclusion of posted workers is a necessary precondition of its effectiveness. It should establish a system of joint and several liability holding the main contractor liable for working conditions throughout the entire chain, so that posted workers may claim unpaid wages or social contributions from subjects with real economic power even in complex cross-border situations involving intermediaries or letterbox companies, while the due diligence defence is used not as a means of avoiding liability but as an instrument encouraging responsible business conduct. Finally, it must be accompanied by strong control and enforcement mechanisms, including the strengthening of labour inspections and of cross-border cooperation, particularly in information exchange and joint action against fraudulent practices, since without effective controls and sanctions even sound normative solutions, chain liability included, remain without real effect.

(c) Wider practical application

Beyond the EU legislature, the results are applicable to national legislators considering the design or reform of liability schemes in subcontracting, for whom the comparative critical evaluation of the German, Austrian, Dutch and Belgian models and the identification of the recurring effective elements provide a reasoned basis of choice. They are applicable to the social partners, since the analysis shows that the more successful national solutions were closely linked to the active involvement of the social partners in their shaping and introduction, while also demonstrating that social dialogue cannot replace the need for a clear normative framework at EU level setting the boundaries within which it can develop. They are applicable to enforcement authorities, in that the research identifies transparency and documentation obligations as the evidentiary precondition of any functioning liability mechanism. Finally, the three-criteria evaluation framework is applicable as an analytical tool for the assessment of further liability models beyond those examined here.

PART IV – List of Publications Related to the Topic of the Dissertation

Konjević, T. (forthcoming) 'Posted Workers in subcontracting chains: A blind spot the Quality Jobs Act must address', ETUI Policy Brief. Brussels: ETUI.

Vinković, M., Konjević, T. (2026) ‘Missed Opportunities in EU Labour Law: Posted Workers Protection in Subcontracting Chains’, INTEREULAWEAST: Journal for International and European Law, Economics and Market Integrations, 13(1), pp. 183–204.

Vinković, M., Konjević, T. (2026) ‘Lost in space: CEE countries workforce and 20 years of enlargement’, in: Koldinská, K., Strban, G., Kun, A., Wujczyk, M. (eds.) Labour law and social security law in Central and Eastern Europe. Cham: Springer.

Vinković, M., Konjević, T. (under review) ‘The Concept of “Worker” in EU Labour Law: Between CJEU Functionalism and National Divergence in Central and Eastern Europe’.

Konjević, T. (forthcoming in 2026) ‘Migrants and migrant workers – protection provided by the ECHR with special emphasis on CEE countries’ issues’, in: Jakab, N. (ed.) Human rights protection of vulnerable groups. Budapest: CEA Publishing.

Konjević, T. (2025) ‘Challenges in intra-EU labour migration: Freedom of movement and combating discrimination with a focus on CEE workers’ treatment’, Law, Identity and Values, 5(1), pp. 75–88.

Konjević, T. (2023) ‘Free movement of workers within the EU: Western solidarity or dystopian challenges for Central-East European workers?’, Ljubljana Law Review, 83, pp. 119–144.

Šimunović, L., Konjević, T. (2022) ‘Implementation of Directive 2019/1023 in the Croatian legal system: A new trend of restructuring in Croatian insolvency law or another missed opportunity?’, EU and Comparative Law Issues and Challenges Series (ECLIC), 6, pp. 190–212.

Konjević, T. (2022) ‘Legislative and practical aspects of freedom of movement of workers’, in: Conference volume of the Doctoral Forum 2022.