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THREE-LAYERED POLICY FILTER IN FREE MOVEMENT FOR WORK AND WELFARE (a conceptual framework of the EU social security coordination, national social security and taxes on the welfare of frontier workers)

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1. Introduction

Labour mobility raises new challenges to both, the welfare state and individuals. Welfare states prioritize differently their policy objectives in line with their pressing population needs. This complicates the coordination efforts, as each state has different designs of social security systems. On the other hand, when ‘mobile’ individuals become subjects to two or more tax and social security systems due to their current or previous place of work, they are exposed to different legislations and conditions of benefits and taxes.

This paper focuses on a particular group of mobile earners that is frontier workers, as they interact daily, weekly and monthly with two fiscal and social security systems. We examine the country cases of Luxembourg and Belgium due to their long tradition of cross-border cooperation and similarities in social security systems.

This Chapter is essentially organized as follows. We start with Section 2 where the term of frontier work and cross-border regions is introduced, along

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with explanation of country selection. Section 3 contains a list of actors (academia, cross-border organizations, etc.) that investigate the topic of frontier work from different aspects. The Section 4 contains a conceptual framework developed as a result of interaction of more legislative and social policy layers. It aims to discuss about the interplay between the EU supranational law, welfare state and national tax law, considering them key actors involved in defining the welfare of frontier workers and mobile workers in general and a prerequisite to free movement for work (policy framework).

Labour and equality law is central to the functioning of society and economy, the labour law regulates individual's employment relationship and employment rights, as well as the labour market and the relation between the State, employers and employees, and their representatives (Barnard & Peers, 2014). The EU supranational law in social security refers to the Regulation (EC) 883/2004 and is in charge of promoting free movement for work. As such, it was established as a mechanism of coordination among the social security administrations of the European Union Member States. Hence, when a mobile earner moves to another country for work, the Regulation (EC) 883/2004 insures the transportability of child, pension or other types of benefits to the country of work. The cases of infringement or abuse of social benefits are solved by the national or European Court of Justice, thus the individual is a subject of EU law in the first place. Yet, the specificities on the amount, length and other conditions of benefit is defined by national law and here comes into play the second key policy instrument, the national social security law. Throughout the thesis, the welfare state concept defines and represents it. However, it is acknowledged the fact that social security systems and personal income taxes vary greatly due to different culture of organisation and historical path dependency (Schokkaert & Van Parijs, 2003). Inevitably, this affects the mobile earners to the extent to which they are subjects of more than one tax in social security system. Studies show the dissatisfaction of frontier workers (AEBR, 2010) due to such differences and the need for examination of how much the difference among the fiscal and social security compartments of the member states affect mobile earners emerges.

In trying to examine the overarching research question on whether the welfare states follow the same welfare objectives for their residents as they do for their frontier workers, firstly was important to understand the "equality of treatment"² principle. Although it originates from legal realm, the equality of treatment question has high social policy relevance. According to this principle, the 'mobile earners', or those individuals who work in more EU countries throughout their career are subjects to the relevant country of employment and thus can enjoy the same benefits as nationals. In order to identify how equally one individual is treated over the other in terms of their social and fiscal

² Regulation (EC) 883/2004 (Article 4 states: "Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof").

entitlements and obligations, the legal specialists apply rules from national laws and ‘match’ the national laws of the country of employment and residence with the European Union law or vice versa. Extensive works in this area exists (Craig & De Burca, 2011; Pennings, 2011; Verschueren,(2012) and these show high level of complexity that lawyers deal with in trying to meet the requirements of the national law in the country of residence, the country of employment and the EU coordination law.

Illustrative cases are: Case C-85/96, *Sala* [1998]³; Case C 36/96, *Gilly* [1998]⁴; Case C-258/04, *Ioannidis* [2005]⁵; Case C-212/05, *Hartmann* [2007]⁶;

Case C527/06, *Renneberg* [2008]⁷; or other cases as Case C-184/99, *Grzelczyk* [2001]⁸; Case C-224/98, *D’Hoop*, [2002]⁹; Case C-209/03, *Bidar*, [2004]¹⁰.

Yet, the equality of treatment of mobile earners is not solely a legal question it is also strongly embedded in social policy realm (Sainsbury, 2006). Regardless of employment status, individuals can face various life-cycle risks (e.g. unemployment or poverty). Shaw (1998) argues that the current model of citizenship in the EU is in a vicious circle since it is not able to provide solidarity amongst its citizens, due to strong financial solidarity between nationals of a host Member State. The aim is to compare how frontier and domestic workers face life events such as unemployment, child birth or retirement.

It is argued that the original design of the welfare state, where the citizens who lived and worked in the same country are entitled to social benefits does not hold in the case of mobile earners and/or frontier workers, because they operate in different countries and their income is not related to their place of residence. Since, the EU Regulation on social coordination covers mobile earners ‘social

³ Spanish citizen in Germany, discrimination on nationality base, refusal to grant child raising allowances on behalf of the Bavarian authorities.

⁴ Bilateral convention for the avoidance of double taxation for frontier workers.

⁵ On nationals of a Member State who are seeking employment in another Member State fall within the scope of Union law.

⁶ On national of a Member State who worked within one Member State, but had transferred his/her residence to another Member State is to be considered a frontier worker within the meaning of Regulation No 1612/68. Therefore, he/she cannot be excluded from access to the social advantages to which nationals of the Member State of origin are entitled.

⁷ On the favourable of the tax regimes of the Member States involved in cross-border work.

⁸ Decision on behalf of Belgian social security administration to stop the payment of social assistance benefits claims (*Rudy Grzelczyk vs. Centre public d’aide sociale d’Ottignies-Louvain-la-Neuve*).

⁹ Belgian student who completed high school in France and who was rejected for unemployment benefits because living in another Member State.

¹⁰ French national, entered on the territory of the UK for family reasons, who after a while started a course in economics at the University College London. While Mr Bidar received assistance with respect to tuition fees, his application for financial assistance to cover his maintenance costs, in the form of a student loan, was fused on the ground that he was not settled in the UK. He brought proceedings against that refusal.

entitlements, it is imperative to approach the national welfare state and European supranational law as a whole. Moreover, it is important to emphasize that tax laws are not related neither to EU or national law.

2. Cross-border work mobility

In this section, the concept of frontier workers amongst other types of mobile earners, along with some particularities of Cross-border Regions in the European Union and the reasoning in our country case selection: Luxembourg and Belgium is introduced.

The term “frontier worker” has been selected due to a clear definition provided by the European Parliament (1997). In many studies (Nerb et al., 2009; Distler & Essers, 2011), cross-border and frontier workers are used as synonyms, however, in some parts a ‘cross-border worker’ overlaps with the concept of a migrant worker (e.g. Vonk, 2012). To avoid confusion, the definition of the European Parliament (1997) is used, according to which a frontier worker is someone who “is engaged in a remunerative activity of a Member State in which he or she does not reside”¹¹, “who normally returns daily, or at least once a week in the residence country.”¹² If a cross-border worker can decide to remain in the country of employment, as a migrant worker, this is never the case for frontier workers.

At the level EU level, the terms of ‘cross-border worker’ or ‘frontier worker’ are used as synonyms. Yet, to avoid any semantic misunderstanding between and ‘cross-border worker’ as someone who return daily to the country of residence, in this study the concept of ‘frontier worker’ has been chosen as the most adequate concept to describe our target group.

In the ‘age of migration’ (Castles, 2009), the mobility of labour force across the world is steadily gaining new forms. Frontier workers present a new form of labour mobility (King, 2002). Table 2 contrasts various types of mobile earners and frontier workers single out due to its particularity of daily interaction with two different fiscal and social security systems.

As Table 2 illustrates, labour mobility encompasses a broad spectrum of social science fields, such as Migration studies, Sociology of migration and Social policy that investigate mobile earners from more prisms. It can range from subjects such as national identity, assimilation theories to social rights and benefits.

¹¹ International Organization of Migration, Art. 2 of the International Convention of the Protection of the rights of all migrants and workers and members of their families, 1990.

¹² Definition of frontier worker from the Art.1 of the Model Provision of a Bilateral Social Security Agreement, Council of Europe, 1994.

Table 1. Migrant worker as a subject of sociology, social policy, migration studies

Discipline	Sociology of Migration	Social Policy	Migration Studies/theories
Migrant worker typology	a Middle man minority model Ethnic entrepreneur model Ethnic niche model Ethnic enclave economy	Migrants Cross-border workers Cross-border shoppers Seasonal workers	d Highly skilled Returning migrants Temporary/seasonal workers Irregular migrants e New typology of European migrants
Key concept	Trans-nationalism, globalization, ethnicity, national identity, immigrant community; Citizenship (Political; civil; social; post-national; denationalized; transnational)	b welfare solidarity; social security coordination; portability of social benefits; harmonization; welfare migration; social rights; inclusion/exclusion; citizenship; benefit entitlements;	c Migration policy regimes; legal status of the worker; ethnic fractionalization; assimilation theory

Sources: ^aSchmitter Heisler B., (2008); Kvist J. (2004), Sainsbury D. (2006); ^dCastles S. (2009), ^eKing R. (2002).

Approximately 780.000 out of 10 million of mobile earners are frontier workers (Bonin et al., 2008). Nerb et al. (2009) identified the following countries where frontier earners work the most:

Switzerland (206.000 individuals)

Luxembourg (127.000)

Germany (86.000)

Netherlands (58.000)

Austria (48.000)

Belgium (39.000)

The countries from which frontier workers commute the most are:

France (284.000)

Germany (117.000)

Belgium (78.000)

In total these comprise about 60% of all out-commuters in the EU. Other countries of origin are also important, but undocumented: Estonia, Belgium, Slovakia and Slovenia. Similarly, undocumented important destination countries are: Finland and Ireland and the small principalities of Monaco, Liechtenstein and Andorra (AEBR, 2010).

The researched target group in this thesis is not necessarily deal with, what in classical terms of social policy would be a target group of social assistance schemes. These are individuals who seek to maximize their personal income, considering the geographical position they are in (Pierrard, 2008). Nor are frontier workers a large ‘policy target group’, presenting a less urgent inclusion policy problem or a significant mass of voters. Nonetheless, the issues that frontier worker in the European Union face is an illustrative example of the consequences between the differences in system organization and their interaction.

The areas in which frontier workers operate their daily activities are called Cross-Border Region (hereafter, CBR) and these are counted to be more than 70 regions throughout Europe (Table 1, Chapter 1). A series of studies are carried out in this field (Matthai, 2004; Perkmann, 2007; Pierrard, 2008; Hall, 2008; Weerepas & Pennings, 2006) on the following CBRs: Euregio Liege-Maastricht-Aachen (Belgium-Netherlands-Germany); Saar-Lor-Lux (Luxembourg-Germany-France), Frankfurt/ Oder-Slubice (Germany-Poland); Saarland-Lorraine (Germany-France); Tyrol Euro-region (Austria-Italy); Øresund Region around the Sound (Sweden and Denmark); the twin region Uusimaa-Harjumaa (Finland-Estonia); Vienna-Bratislava (Austria-Slovak Republic); Geneva-(Switzerland-France).

Cross-Border Regions have important implications for the national and local administrations and economy. For example, in the French Parliamentary Mission on transfrontalier policy reports: “Nous comptons pres de 3.000 km de frontier. 16 regions, 28 departements sont frontaliers, 10 million de francais resident a proximite” (Blanc, Keller & Schmidt, 2010). Initiatives in the field of cross-border co-operation were supported by the European Commission with approximately 700 million of Euros per year, complemented by a similar amount by the European nation states (Perkman, 2003). A good example of institutional multidimensionality is the region where this dissertation is written. Only within the Dutch-German cross-border EUREGIO, 130 Dutch and German municipalities, towns, and administrative districts work together across the border various projects. EUREGIO has spent more than 45 years building and reinforcing cross-border structures. Its neighbouring region Saar-Lor-Lux (SLLR) includes France, Germany, Luxembourg and Belgium, similarly has a vibrant institutional and labour market life. In Benelux area, the statistics of cross-border workers indicate (Belgian FPS Social Affairs, 2010):

- ± 31,400 Belgian citizens work in the Netherlands;
- ± 7,300 Dutch citizens work in Belgium;
- ± 32,600 Belgian citizens work in Luxembourg;
- ± 450 Luxembourg citizens work in Belgium;

Between 1988 and 2004, cross-border employment increased by an annual average of almost 10% (Eurofound, 2009).

Country cases

Luxembourg and Belgium were selected due to their relevance to the current study; Luxembourg is the receiving country with the highest number cross-border workers, while Belgium has the highest rate of cross-border sending countries, (Bonin et al., 2008). The Luxembourgian labour market is formed of almost 40% of German, Belgian and French cross-border workers, with Belgium currently presenting one of the major forces of labour in Luxembourg.

In terms of occupations at the higher end of the social hierarchy, directors, senior managers and salaried workers within the liberal and scientific professions are particularly well represented among Belgian cross-border workers (18.8%), compared with German cross-border workers (12.1%) and French workers (9.1%). Over the past 10 years, Figure 1 shows an increase in the Belgian commuters to Luxembourg.

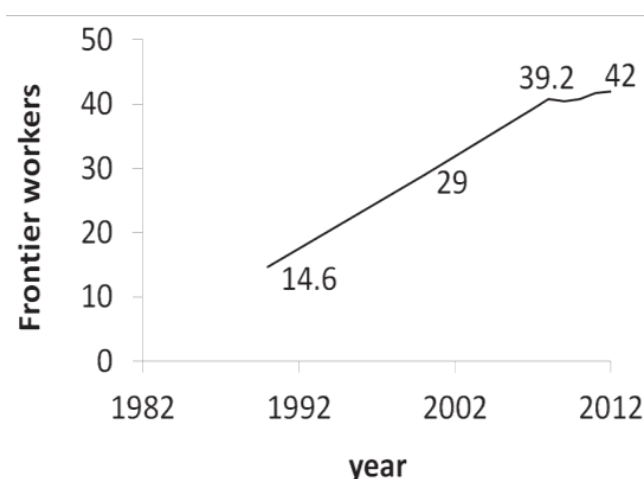


Figure 1. Belgian frontier workers in Luxembourg, (thousands)

Source: Official Statistics of Grand Duchy of Luxembourg, (2012).

Some European countries removed border barriers and allowed free circulation of persons and services, before the European Economic Community was founded (Treaty of Rome, 1957). Based on bi-lateral economic agreements, countries such as Belgium-Luxembourg (UEBL, 1921); and later Belgium-Netherlands-Luxembourg (Benelux, 1944), signed amongst the first agreements to eliminate economic frontiers and develop strong labour markets. These were the first European countries to share a common currency and later on, a high fluctuation of job migration, (Nerb et al., 2009) with a long cross-border cooperation and respect for mutual agreements. A long tradition of institutional favourable cooperation is characteristic to Belgium and Luxembourg. Within the cross-border workers arrangements the largest trade union in Luxembourg, the Confederation of Christian Trade Unions (LCGB) reached a cooperation agreement in 1985 with the Belgian General Christian Trade Union (ACV/CSC).

Lastly, but not least, characterized by relatively similar social security systems organization. Luxembourg and Belgium present an interesting case to investigate when it comes to sharing and respecting mutual agreements with respect to the freedom of movement of workers. It is also a case of “sovereignty comparative advantages of small states” (OECD concept), where a power balance needs to be found in implementation of similar agreements¹³.

When country cases have different institutional organization of social security systems (e.g. the Spanish and French example from Chapter 1) the differences can reside in objectives and principles of the functioning of the system. However, here two countries with comparable settings and more similar welfare objectives to test the coordination effects are chosen.

Generally, Belgium and Luxembourg are classified as Conservative-Corporatist welfare regimes although some authors place both cases in the hybrid group between Scandinavian and Continental (Hartmann-Hirsch & Ametepe, 2011). Since we carry out benefit calculations, similar to Ferrera (1996) we consider both countries to belong to the same regime. The Luxembourgian-Belgian cooperation takes an important place in bi-lateral agreements and cross-border conjuncture of both countries, illustrates one of the recent discussions on Belgian and Luxembourgian cross-border cooperation and rights of workers, the place where social security lawyers, academia and high ranked policy stakeholders gathered to tackle the problems that frontier workers face.¹⁴

3. Free movement for work and assessment

Free movement for work is at the core of policy discourses and is on the EU agenda for more than 50 years. Freedom of movement is considered by more than 60% of the EU’s population as the highest achievement of the European Union since its foundation. Using discourse analysis of Belgian and Dutch policy makers and politicians, Hupe & van Duren (2010) challenge the one-to-one relationship between reform and better performances, by examining the type of discourse. They demonstrate that an essential characteristic of reform in these two comparable welfare states the discourses can fundamentally help shaping reform results. Hupe & van Duren (2010) point out that the recommendations in public policy (includes social) are rarely based on empirical evaluations.

¹³ The agreements of social security coordination between Luxembourg and Belgium are signed by the Prime-Minister of Luxembourg and the Mayor of Wallonian municipality.

¹⁴ “Colloque Belgo – Luxembourgeois: La libre circulation des travailleurs et des citoyens”, by Catholic University of Leuven, the University of Luxembourg and the Network of Experts on Free Movement of Workers, the University of Nijmegen. More information: <https://www.uclouvain.be/460552.html>.

Various types of sources that generate studies on frontier or cross-border work are identified.

A. *International level.*

Cross-border or frontier work is seen most of the time specific to an area, thus statistics and reports at international level are rather concentrated around general labour migration statistics.

- International Labour Organization¹⁵ (ILO) is probably one of the most known and among oldest entities at the international level that regards human rights, focusing on specific type of migrants, such as migrant workers and their families. A strong dimension of it includes social rights of migrants. ILO informs us for example that currently only 20% of world's population has adequate social security coverage and more than a half lack any type of coverage.
- International Social Security Association¹⁶ (ISSA) is related to ILO and is the world's leading international organization for social security institutions, government departments and agencies. It collects worldwide data social benefits rules.
- International Organization for Migration¹⁷ (IOM) has a long history in statistics collection, reporting and analysis on world migration that deals with various dimensions of migration phenomena. It aims to assist with operational management with migration, amongst which also with social security rights of migrants all over the world. The World Migration Reports¹⁸ are a particularly useful source that informs us about migration trends and challenges, including global labour migration.
- Organization for Economic Co-operation and Development¹⁹ (OECD) is another important institution that deals with statistics on migration. It provides data on stocks and flows of immigrants and labour market outcomes in OECD countries.
- More specific organizations that deal with cross-border issues (e.g. taxes, pension, etc.) are large auditing and accounting companies, such as:

¹⁵ International Labour Organization:

<http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>

¹⁶ International Social Security Association: <http://www.issa.int/>

¹⁷ International Organization for Migration:

<https://www.iom.int/cms/en/sites/iom/home/about-iom-1/mission.html>

¹⁸ Ibidem: http://publications.iom.int/bookstore/index.php?main_page=index&cPath=37

¹⁹ Organisation for Economic Co-operation and Development:

<http://www.oecd.org/migration/>

KMPG or Ernst & Young. These are scarcely reported throughout the thesis, as these do not embody public services or usually restricted statistics accessible to wider public.

B. *European level*

This subsection introduces the reader into the general EU institutional framework that provides with studies and statistics on free movement for work.

- The European Council and the European Parliament are two main legislators in the field of labour migration and social security. However, the European Commission stands out as an important agent of hosting and implementing the legislation and policy documents in this area. Its' two Directorates General: DG Employment, Social Affairs and Inclusion²⁰ and DG Justice, Home Affairs and Citizens Rights²¹ are key policy actors in social security coordination and free movement for work. The first provides information services to EU citizens on questions related to job mobility to another Member State, on one hand. DG Employment, Social Affairs and Inclusion and finances scientific and policy consultancies in the area of labour mobility, on the other hand. In this sense, the online Journal on Free Movement for Work²² is launched since 2010 to present the view of the academia and policy makers on (mostly legal) issues related to free movement for work. The network of experts organized by this DG organizes Annual Conferences on Free Movement for Work to offer a platform of scientific communication between academia and policy makers and to synthesize the progress and difficulties encountered in this area by the European Commission.

Furthermore, the European Commission initiated very important research projects in the area of cross-border work and financially supported a series of tenders (e.g. Bonin et al., (2008); Nerb et al., (2009)). These present statistics segregated by gender, occupation and other parameters of frontier workers in the European Union. The latter study summarized on 41 cross-border regions using following methodologies: desk reviews, online survey, expert interviews (440 labour market experts) and partially available statistics. "Social security coordination"²³ unit is in place to clarify the application of the EU law in the field of social benefits. DG Justice²⁴ as well deals with informing the citizens on their rights, also

²⁰ European Commission: <http://ec.europa.eu/social/home.jsp?langId=en>

²¹ Ibidem: http://ec.europa.eu/justice/index_en.htm

²² Ibidem: <http://ec.europa.eu/social/main.jsp?catId=475&langId=en&furtherPubs=yes>

²³ Ibidem: <http://ec.europa.eu/social/main.jsp?langId=en&catId=849>

²⁴ Ibidem: http://ec.europa.eu/justice/citizen/index_en.htm

extending this arena with electoral rights, and dealing with complaints and petitions.

- Under the guidance of the Committee of Regions, the European Grouping of Territorial Cooperation (EGTC) was established as a legal instrument to strengthen and support cross-border, transnational and regional cooperation between its members, strengthening the economic and social coherence through the implementation of a common development strategy. Annually they provide with Monitoring reports for the Committee of the Regions, where the performance of 45 regions of the European Union is discussed. Other programs such as: INTERREG mainly provides funding for interregional cooperation across Europe, but also it holds a valuable database on good practice on cross-border cooperation.

Another active and massive programme that supports cross-border cooperation at EU external borders is the INTERACT. Areas of expertise: Programme management, Communication, Financial management and Knowledge Management and Capitalisation. Informative brochures and practical at-hand consulting are provided by the Contact Points.

C. *Scientific and policy networks (European) level*

Here, cross-border organizations and academia are considered. Cross-border organization reports on cross-border regions problems in a particular geographic area: Organizations in this field carry a wide range of activities, such as: trainings, networking and information, advising and legal consulting, tasks forces. Although most of reports in this area focus on cross-border regions cooperation and economic strengthening, many aspects are discussed at individual level as well.

- AEBR, the Association of European Border Regions is a solid resource in cross-border activities and challenges at individual level. A 3 to 4 multilingual reports are provided annually to interested stakeholders on the AEBR activities throughout the year, among other works are: AEBR (2012).
- MOT, *Mission Opérationnelle Transfrontalière*²⁵ (France) is a rich resource center on cross-border work cooperation and economic development. Although focused on French cross-border territories, which hold the majority of frontier earners in the European Union, MOT is a

²⁵ Mission of Transfrontier Operations (MOT):
<http://www.espaces-transfrontaliers.org/en/>

good example of bridging policy analysis with practice²⁶. An illustrative report characteristic to this Cross-border area belongs to Blanc, Keller & Schmid, (2010).

- EuroInstitute²⁷ is a Franco-German organization that aims at improving cross-border cooperation through training and consulting in various public policy areas. Transfrontier Euro-Institute Network (TEIN)²⁸ brings together 12 partners from nine border regions in France, Germany, Switzerland, Austria, Italy, Slovenia, Poland, Czech Republic, Denmark, Belgium, Spain, the French Caribbean, the UK and Ireland.
- University environment (few examples). One of the most illustrative examples of network of experts lead by academic is the former trESS²⁹ or EC-funded network of independent experts in the fields of EU free movement of workers (FMW) and social security coordination (SSC), currently called FreSsco. This network is coordinated by Ghent University and Eftheia. Another example is the Centre for Migration Law³⁰ (University of Nijmegen) that with the support of the European Commission managed the European Network on Free Movement of Workers within the European Union; one of the activities of this Network is the annual production of a European report on the implementation of EU free movement law in the Member States. The Maastricht Centre for Citizenship, Migration and Development³¹ (MACIMIDE) of the Maastricht University is a research platform in the fields of migration, mobility, citizenship, development and family life.
- Regional centers and organization (with focus on Luxembourg and Belgium). A special interest of this research group concerns the cross-border mobility in the Benelux countries and Germany, thus a rich source of information on frontier work is the Benelux organization³² (see also Benelux Official Journal³³). Euregio³⁴ is another important regional information source on frontier work in Germany and Netherlands.

²⁶ Ibidem: http://www.espaces-transfrontaliers.org/fileadmin/user_upload/documents/Documents_MOT/Cahiers/Cahiers_de_la_MOT_9_EN.pdf

²⁷ Euro Institute: <http://www.euroinstitut.org/wFranzoesisch/1-Qui-sommes-nous/in-english.php>

²⁸ Transfrontier Euro Institute Network: <http://www.transfrontier.eu/>

²⁹ Training and Reporting on European Social Security: <http://www.tress-network.org/>

³⁰ Center for Migration Law, Nijmegen University: <http://www.ru.nl/law/cmr/projects/fmow-1/>

³¹ macMmide, Maastricht University: <https://macimide.maastrichtuniversity.nl/>

³² BeNeLux <http://www.benelux.int/nl/>.

³³ BeNeLux Official Journal: <http://www.benelux.int/nl/publicaties/publicaties-overzicht/benelux-publicatieblad>.

³⁴ Euregio: <http://www.euregio.eu/nl/over-euregio/geschiedenis>.

Luxembourg plays an important role in frontier work research in Luxembourg and not only. The Metrolux team at the Centre for Population, Poverty and Public Policy Studies (CEPS/INSTEAD) in Luxembourg studies the mechanisms of regional integration of cross-border metropolitan centres, both in economic and political terms. The research examines (1) the modalities of the economic development of these cross-border regions within the global system, (2) the cooperation and modes of governments implemented by various public and private actors in order to manage spatial development and coordinate their actions and (3) the role and importance of national borders within these processes. Multiple studies are carried out by the team, of which: Decoville, Durand, Sohn & Walther, (2012); Walther & Dautel (2010); Sohn, Reitel & Walther, (2009).

- Guides to mobile earners or frontier workers on applicable social security law and tax law in a cross-border situation. The first toolkit for mobile earners are the official reports and studies presented by the European Commission, under the EU Social Security Coordination section³⁵, where video, audio and written extensive material is presented to the reader to guide through the EU legislation on health care, pension and other dimensions that regard the life of a frontier worker. Other useful and comprehensive guides are presented by Vandenbrande (Ed.), (2006); Essers & Distler (2011) where for more types of workers (posted workers, pensioners abroad, migrant workers, cross-border workers) social security and tax law guidance is provided for various areas: sickness, occupational benefits, unemployment or child related benefits.

Following key research topics are crystallized:

- Reports and analysis on welfare and migration: One of the most recent and illustrative works are of Guild, Carrera & Eisele (Eds.), (2013) who raise the topic question of access to social benefits of EU migrants. Raymer et al., (2011) present an Integrated Modelling of European Migration model and argue that international migration data are currently collected by individual countries, fact which can create problems when trying to understand and predict populations' movements between the countries. Although, using international labour migration amongst EU's countries and European Free Trade Association example, this is dimension remains valid for cross-border work as well. Nowrasteh & Cole (2013) look at the US example. Burgoon, Koster & Egmond (2012) affirm

³⁵ European Commission:

<http://ec.europa.eu/social/main.jsp?catId=866&langId=en&furtherPubs=yes>

that immigration directly influences the politics of inequality in complex ways a country. Against the common view in political economy that immigration might be bad news for redistribution in a country, the authors hypothesize and find arguments that occupational rather than national exposure to immigrants can have different, even opposite implications for support for redistribution. A series of analysis refers to welfare distribution and world location from a spatial perspective, the work of Puga (2002) is suggestive.

- The mobility of people is discussed both, in sociological paradigms and in Sociology of Migration. Sociology theorists mainly investigate migrants' relation with the receiving country ("assimilation"), emphasizing the process of immigrant incorporation³⁶. In sociological paradigms, the migrant is seen as a "modern stranger" (Woods, 1934; Simmel, 1977), who tries to join a group from outside and who is accepted to a group as a member, but who nevertheless remains detached from it, usually performing low-skilled work. Increasingly, this image is replaced by refugees kept in closely scrutinized asylums, or illegal immigrants. Moreover, migrant workers can be suspected of representing the threats of crime and terrorism ("Paradigm of suspicion", see Shamir, 2005)³⁷. Despite above attributed features of migrant workers in sociology, "the connections between division of labour and stranger-relations, received little attention in the classical literature. Other topics are focused on: a) solidarity of welfare state, whether migrants are a burden for the welfare (Engelen, 2003; Mau & Burkhardt, 2009); b) how are social benefits coordinated across the European Union; issues of harmonization, social integration, welfare migration; c) social rights of migrants; topics as: migration policies, benefits eligibility conditional to nationality and residence. Little attention was devoted to social policy in analysis of economic migration. Sainsbury (2006) critiques welfare state literature that has largely ignored the situation of immigrants, - considering them as a burden to welfare state; additionally, the international migration literature under theorized welfare state variations.

³⁶ See Annex, Table 2.

³⁷ The conceptual link between immigration and social vices such as crime, disease, and moral contamination has gripped the public mind long before the present era and continually shapes immigration policies and border-control measures. Mobility is perceived as a suspicious activity especially when it relates to those without property (Shamir, 2005).

D. *Bilateral, trilateral and multilateral level:*

In Annex 1 of Chapter 1, almost 80 European Cross-border Regions are listed. Further on, few cross-border regions are presented.

- Netherlands – Germany, Euregio³⁸
- Belgium-Netherlands-Luxembourg³⁹, BeNeLux
- South of the Province Limburg (Netherlands), Province of Limburg (Belgium), Province of Liège (Belgium) and Aachen (Germany) Region the German-speaking Community (Belgium),⁴⁰ Euregio Meuse-Rhine.

These register different levels of decision making involved (e.g. central authorities in Benelux case versus local and central authorities in the case of Euregio).

The above presented list of sources shows a wide range of actors (European Commission, Committee of Regions, cross-border organizations, networks of experts, policy analysts, social security and tax lawyers) are interested and provide expertise in the field of frontier or cross-border worker in the European Union, both at the EU and country level. Yet, a large gap in the literature that addresses the cross-border mobility at the individual level is identified. Namely, due to restricted data and exchange between countries on social security and fiscal records, an important segment of micro-data in this area is missing, which we try to compensate by providing analysis using hypothetical data. General statistics segregated by socio-economic indicators are useful and informative for descriptive statistics, however if one aims for more specific policy recommendation more detailed data is needed.

4. “Three-layered policy filter” framework

Section 4 lies at the core of explaining the functionality of the tax-benefit model for frontier workers. It proposes the concept of a three-layered policy filter to summarize as close as possible the complexity that lays in the interaction between social security coordination law, national social security law and tax law.

4.1. National social security law

The focus of this section is to familiarize the reader with the role of legislation of national social security laws. As technical as it looks, this section

³⁸ Euregio: <http://www.euregio.eu/nl/over-euregio/geschiedenis>

³⁹ Benelux organization: <http://www.benelux.int/nl/>

⁴⁰ Euregio: <http://www.euregio-mr.com/de>

is important as the starting point of the income calculations for mobile or frontier workers' welfare is the national social security law.

National laws consist of legal documentation usually drafted by the ministries of social protection and approved by the parliamentary bodies. These reflect the adequate conditions (e.g. amount, length, eligibility) and numerical values on benefits that are to be granted to the citizens of a state, depending on their employment and other related criteria status (Walker, 2005). These numerical conditions can be found in most details in the methodology Chapter 4, under the title of 'Policy components'. It is at national level that objectives of a welfare system are defined. At EU level, most of the regulation in the area of social policy refers to EU labour and equality law (Barnard & Peers, 2014). In the view of the authors, it is with labour and equality law that the European social model is formed, despite its rather vague concept. The equality of treatment question discussed throughout the thesis originates from this particular domain.

The national legislation is not developed separately from the international arena. Common international standards existed in the area of social security to try deal with the entitlements and rights of migrants. Therefore, national social security law is of interest to frontier earners to extent to which these incorporate laws from two countries, the country of employment and of residence. Furthermore, social security agreements are used as an example to show how social security administrations interacted through national social security law to protect mobile earners.

International context

The history of international social security treaties goes back to the beginning of XX-th century, when each of the member countries has signed a plethora of international social security agreements presented in Table 4 (Annexes):

A Social Security Agreement (SSA) is a treaty which coordinates the social security schemes of two or more countries to ensure the portability of social security entitlements (ILO, 2010). It has the objective to protect the social rights of migrants. At the basis of bilateral agreements, lies the principle of reciprocity, where each party shares the costs and benefits on a reasonable equal basis.

Let us pass through a brief historical overview depicted in the Annex 1. Directly, after the I-st World War in 1919 the International Labour Organization (thereafter, ILO) was founded and straight after the II-nd World War, the Council of Europe (thereafter, CoE) was set up, (1949). These two key institutions ratified and series of international legislations that shaped all European states' national law in social security.

After Second World War, the first regulatory instruments were launched in the area of social protection of migrants in Europe, namely: The European

Interim Agreement on Social Security Schemes Relating to Old Age (1953), Invalidity and Survivors and European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors (1953). These provided for nationals of any one of the Parties to be entitled to receive the benefit of the laws and regulations of any other Party, under the same conditions as if person were a national of the latter, providing that certain conditions of residence are fulfilled.

The European Code of Social Security (1964)⁴¹, (CoE) is one of the first attempts to harmonize social security in Europe, aimed at establishing a series of minimum standards in social security that hosting countries need to provide for their migrant workers, focused on the living standards of those who had survived the destruction and turmoil of the II-nd World War. More details on international legislation can be found in Table 4.

EU context

The overarching legislative documents that were launched almost at the same time with the Conventions from ILO and CoE, are the European Treaties. The year of 1957 remains memorable for the European space, it lays down the Treaty Establishing the European Economic Community Treaty or Treaty of Rome, which entered into force in 1958. It was in the Treaty of Rome that the free movement of persons was announced for the first time, in its Article 48. The free movement of persons was fully established as a fully-fledged right in 1968 through the Regulation (EEC) 1612/68, contained also in the Treaty of Maastricht 1992, Treaty of Amsterdam 1999, Treaty of Nice 2003 and latest Treaty of Lisbon 2009.

It is important to emphasize that after the Rome Treaty 1957 attempts to discuss and implement free movement for work were already stated in the Regulation (EEC) 15/1961. Yet, the regulation that lays at the foundation of the modern rule on freedom of movement for work is the Regulation (EEC) 1612/68. This has only partially been replaced at present by the Directive 2004/38/EC and the Regulation (EC) 492/2011.

The right of entry, stay and leave were initially laid down in the Directive 68/360/EEC that currently has been amended in the Directive 2004/38/EC. These clarify two important aspects: the entitlements of family members that can enjoy the same rights as the primary person has and the entitlements of the unemployed persons who wish to move to another Member State. Both entered into force to grant the right to citizens of the Union and their family members to move and reside freely within the territory of the Member States. The most recent legislative acts recently adopted in the area of free movement for work is

⁴¹ Council of Europe:

http://www.coe.int/t/dg3/socialpolicies/source/socialsecurity/shortguide_en.pdf.

the Directive 2014/54/EU and focuses on measures facilitating the exercise of rights conferred to workers in the context of freedom of movement for workers. It aims to remove the obstacles related to free movement, such as lack of awareness of EU rules on behalf of public and private employers and other aspects related to labour mobility.⁴²

A series of legislative developments took place separately in the area of free movement for work and social security coordination. These happened almost simultaneously and strongly intermingle when dealing with mobile earners, their families and their social entitlements. Therefore, on the other hand, almost at the same time, as the conditions on the right on free movement for work became increasingly clear, it was acknowledged that the social entitlements are an indispensable component of mobility.

The first coordination regulation was Regulation 3 of 16 December (1958) which was one of the earliest EEC. Coordination of social security was indeed already at that time considered essential for the free movement of workers, although Pennings (2014) argue that there was also a false start from the point of view of other instruments, as preparatory work for coordination had already started some time before the establishment of the EEC. The first and the most important European legislative acts in this area is the Regulation 1408/71. This was amended few times but most recent amendment is done by the Regulation (EC) 883/2004. This legal instrument is evaluated throughout the dissertation. Its implementing Regulation is the Regulation (EC) 987/2009 that specifies to the Member States the binding rules on social entitlements of mobile earners and their families.

The Regulation (EC) 883/2004⁴³ is the newest regulation on a modernized social security, it has a broader scope than previous regulations and it serves as an important component in the EU's new strategy for jobs and growth "Europe 2020". In the view of Pennings (2009) this regulation brings real innovation in the field of equal treatment of benefits, income and facts. It has higher coverage, now covering people who are currently out of work, not yet in work or no longer working; new benefits - paternity and pre-retirement benefits, adapting to developments in social security legislation at national level. Important part of the existent legislation is the launching of the Electronic Exchange of Social Security Information (EESSI) and simpler and faster procedures; simplified different branches of insurance covered by coordination, such as unemployment benefits, family benefits, and sickness insurance; offers Temporary Affiliation Option.

⁴² European Commission:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2059&furtherNews=yes>

⁴³ Regulation (EC) No 987/2009:

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0987>

Over so many decades, the Community legislation had to undergo many changes, which proves the adaptability and flexibility of the current social legislation (Barnard, 2012). The Regulation (EC) 883/2004 remains the most powerful existent tool to regulate the social security. It is important to emphasize that the Regulations and their implementing regulations are applied at the level of all Members, therefore affecting the countries at national level. Hence the interdependency between these two administrative and institutional levels: national and European is strongly interconnected.

Luxembourg – Belgium context

Luxembourg and Belgium are founding members of the European Coal and Steel Community (1951), also the European Economic Community and later of the European Union. Already in 1968, when first regulation was implemented, Belgium and Luxembourg already would have arrangements between their social security institutions.

The bilateral agreements vary across countries despite a model arrangement having been produced by international bodies, such as the ILO or Council of Europe. One of the largely discussed is the Model of Bilateral Social Security Agreement of social security provisions for member countries (1994, Council of Europe). A Model for Tax Convention on Income and on Capital⁴⁴ is widely applied in the OECD countries, launched by Organization for Economic Cooperation and Development.

The negotiations of such agreements were not an easy task. Bernard (2010)⁴⁵ mentioned in his interview that in the 50s', the translation services were not provided to civil servants. Thus, one would need to go to another country and learn the language and the organization culture in order to understand the provisions in the agreement and then proceed to negotiations. This leads us to main critiques of these types of agreements. The reforms of these agreements were time-consuming, complex to explain and administer, and generally existed only between countries with similar system provisions, leaving migrants from most of the major labour exporting countries as Africa and Asia without protection (Walker, 2005). These later have been superseded by EEC Regulation 1408/71.

Let us further examine the particular case of bi-lateral agreement between Luxembourg and Belgium. Throughout time, Luxembourg and Belgium signed a series of social security and fiscal arrangements. The First Convention of Social Security for Frontier Workers (1951) was signed, followed by a new Convention on Social Security (1995) of frontier workers, their families, survivors and

⁴⁴ Organisation for Economic Co-operation and Development:

http://www.oecd.org/document/37/0,3343,en_2649_33747_1913957_1_1_1_1,00.html

⁴⁵ Author's blog: [http://irinaburlacu.wordpress.com/2014/05/30/against-eu-against-migration-reflections-after-eu-parliamentary-](http://irinaburlacu.wordpress.com/2014/05/30/against-eu-against-migration-reflections-after-eu-parliamentary-elections/?preview=true&preview_id=438&preview_nonce=af27b16122&post_format=standard)

[elections/?preview=true&preview_id=438&preview_nonce=af27b16122&post_format=standard](http://irinaburlacu.wordpress.com/2014/05/30/against-eu-against-migration-reflections-after-eu-parliamentary-elections/?preview=true&preview_id=438&preview_nonce=af27b16122&post_format=standard)

pensioners (composed by 17 Articles)⁴⁶. It describes the conditions of three offered benefits: supply at birth, invalidity benefits and sickness and maternity leave (see a detailed description in Table 5). The reason of why particularly these benefits are foreseen in the Convention and how these were established remains an unanswered question. In the view of Regulation EC 987/2009, Annex I stipulates rules on bilateral agreements remaining in force. Taking this into account, it is argued that the mentioned agreements remain of relevance. However, EU Regulations are directly applicable in the Member States (Article 288 Treaty on the Functioning of the European Union) and EU law has supremacy over national law of the Member States (Craig & De Burca, 2011).

In the past, bi-lateral social security agreements were the main form by which the social entitlements of mobile earners would be defined between the country of work and the country of residence or the sending country. This has been changed when the EU law on social security coordination arise, however the agreements are still applicable in certain situations.

Meanwhile the SSAs are in place between Luxembourg and Belgium and taken over by the Regulation (EC) 883/2004, however, the SSA as such remain very important for third country nationals (as the main tool to manage the social security of migrant workers).

Instead of discussing policy criteria on how the benefit conditions are defined by the national security administrations, it would be interesting to discuss about the social security agreements as predecessors of current EU social security coordination law. The reason is that the social security agreements were the first ones to reflect the view of national welfare state or social security administration views on how mobile earners need to be treated compared to domestic earners. This will give better insight on how things developed and what needs to be addressed in our days.

4.2. European social security coordination law

Throughout all the Treaties⁴⁷ one of the fundamental freedoms is free movement for work. In time, Regulation (EC) 883/2004 and the Directive 2004/38/EC became the most important legislative tools to promote free movement for work at the EU level. Free movement of workers is regulated by a set of legal instruments that derive mainly from the “social security coordination” (SSC) principle and is based on the Regulation (EC) 883/2004.

⁴⁶ Convention on social security for frontier workers in 1995; Convention on Allocation of childbirth benefits under the legislation of family allowances, 1963; Improved Convention in 1964; Last Convention on social security for frontier workers between Belgium and Luxembourg in 1995; The last convention is an improved of the previous one, from 1963; this due that in this period the Regulation 1408/71 was launched.

⁴⁷ Lisbon Treaty (2009), Nice Treaty (2003), Amsterdam Treaty (1999), Maastricht Treaty (1993), Rome Treaty (1958).

This regulation is built upon the cooperation of national social security administrations and is an improved version of the Regulation 1408/71⁴⁸. The latter, older regulation was often criticized as very complicated; its amendments often required lengthy negotiations, which often resulted in new exceptions and rules; and the provisions had to interpret as they were, unless the Court of Justice stated differently. The Regulation (EC) 883/2004 replaces the old regulation in order to modernize and simplify it.

Further on, a description of contexts on when the EU law is applicable over the national law and the principle of social security coordination is contained in Table 3. One of the principles that relate free movement to the welfare state is the territoriality principle discussed in Chapter 1. By this principle, the national laws support the consumption of benefits within the territorial state where they are received by residents (Mei van der, 2003; Pennings, 2011). These national laws exclude outsiders, including cross-border workers, who reside in other countries but work in Member States that are bound by such exclusive laws. Regulation (EC) 883/2004 is particularly for this reason to insure that supranational (rather than national) laws are applied.

Table 2. Rules Determining the Applicable Legislation of the Regulation (EC) 883/2004

What is the Competent State – Where is someone insured?		
Competent State Pays, but can also levy premiums or contributions?		
National Law		Reg.883/2004
Problem: Double insurance or No Insurance at all		➡ Solution: Single State Rule -Art.11(1)
Residence based systems	Employment based systems	Which State? ↓
		Workers Inactive Pensioners (health care)
		Lex Loci Laboris Lex Loci Domicilii Lex Loci Pensionado

Source: Mei van der, (2011), “Coordination of Social Security & Unemployment benefits”, University of Maastricht; Burlacu & O’Donoghue, (2013).

When a person decides to move to another country, several questions arise. The first concerns an individual’s insurance (against unemployment, pension, and other life-cycle risks) in their country of residence. Afterward, it is decided if the individual pays social premiums in the same country where they are insured or in another country. Cross-border workers usually pay all contributions

⁴⁸ EC Regulation 1408/71 “on the application of social security schemes to employed persons and their families moving within the Community.”

and receive family benefits in the country of work and are insured against unemployment in their country of residence. In the case of family benefits, if the family benefits are higher in the country of employment and lower in the country of residence, then they get the highest benefit. Administratively, this works as following: the Belgian earners who live in Belgium and work in Luxembourg receive the family benefits from Belgium, topped up with the difference between Luxembourgian and Belgian benefit. In the case of unemployment, the benefit is paid according to the Belgian provisions on unemployment, considering the previous income from Luxembourg.

The principle of equal treatment refers to the “nationals of an EU country and persons residing in that country without being nationals of it are equal in terms of the rights and obligations provided for by the national legislation.” The paragraph 8 of the Regulation (EC) 883/2004 stipulates that the general principle of equal treatment is of particular importance for workers who do not reside in the Member State of their employment, including frontier workers. One of the fundamental rights is the social right, referring to the right of claiming unemployment insurance as a contributor. The Regulation (EC) 883/2004 refers to maintaining the principle of equal treatment, in this case of workers, in a variety of domains within social security: unemployment, pension, family, health care, sickness, and disability. The aim of this section is to explain briefly the functioning mechanisms of social security coordination for migrant/cross-border/mobile earners in the EU. It aims to place the unemployment scheme in the general social policy framework and to describe some special attributes with respect to cross-border workers and taxation.

One of the principles that relate free movement to the welfare state is the territoriality principle, by which national laws support the consumption of benefits within the territorial state where they are received by residents (Mei, 2003; Pennings, 2011). These national laws exclude outsiders, including cross-border workers, who reside in other countries but work in Member States that are bound by such exclusive laws. Regulation (EC) 883/2004 ensures that supranational (rather than national) laws are applied. To summarize, it is argued that despite that the coordination regulation has supremacy over the national social security law; the national social security law are still very important and decisive for the income of frontier workers when calculating social benefits and taxes.

4.3. National taxation law

Uncertainties in taxation and social security-related issues are one the major obstacles in individuals' decisions to move (Greve & Rydbjerg, 2003). This is because welfare states policy priorities and objectives of EU coordination law

are divergent. The objective of social security coordination policy is to facilitate the free movement of citizens in the European Union, through cooperation of national administrations of social security systems. At the same time, this policy leaves large discretion to the nation states: “The rules on social security coordination do not replace national systems with a single European one. All countries are free to decide who is to be insured under their legislation, which benefits are granted and under what conditions. The EU provides common rules to protect your social security rights when moving within Europe”⁴⁹. Therefore, the national welfare states promote own agenda, depending on its population’s needs, while respecting EU legal provisions⁵⁰ on free movement for work.

Taxes are indispensable when calculating the income that an individual has to spend. Taxation instruments are applied in the case of gross market income to charge accordingly individuals with higher income, versus those whose income is lower. Also these are applied in the case of benefits. Taxes can serve as a sort of release from the burden of extra expenses that different social groups can have (e.g. child tax credit), or to provide to various groups deductions and allowances for their drop in income (e.g. end-of year allowances for pensioners). For a comprehensive framework of welfare assessment of frontier workers, of special importance is to further trace and understand the policy framework of how taxes work in the case of frontier workers. The differences and transparency in tax systems cause dissatisfaction of frontier workers (Nerb et al., 2009). Furthermore, few cases on tax miss-arrangements for cross-border workers are reflected in (Table 6).

There are differences in treatment in taxes and benefits. For example, if in the case of family benefits, for example, the cross-border worker will be granted the benefit amount from the country of residence or employment, depending which one is the favourable, then in the case of taxes, no rules exists to guarantee most favourable of the tax regimes of the Member States involved. Social insurance contributions and taxes are very individual and particular to each situation. If the individual pays taxes in the country of employment, but lives in another country with his spouse and children, then the individual is subject of taxation in the country of residence as well (e.g. local administration, roads.. check the report of Dutch cross-border expert on mobility and what taxes it pays). Moreover, the wife is also subject of taxation in the country of residence. The way a married couple is taxed varies from country to country. In Luxembourg they are subject of splitting method, while in Belgium subjects of individual taxation. It can also happen that one of the spouses become unemployed for longer time or social assistance recipient and the other spouse

⁴⁹ European Commission: <http://ec.europa.eu/social/main.jsp?langId=en&catId=850>

⁵⁰ Social security coordination is founded on few main principles: a) Equality of treatment regardless of nationality; b) Legislation of only one MS applies at any one time; c) Periods of insurance acquired in different MS can be aggregated; d) Benefits can be exported.

remains to be a cross-border worker, than the calculation procedure changes accordingly.

If the social security administrations in the European Union are linked through the coordination Regulation (EC) 883/2004, but in the field of personal income taxation, nothing similar exists. Fiscal bi-lateral agreements remain as the main form of ‘communication’ between two or more tax authorities. A Tax Treaty (TA) has the objective to reduce double taxation, eliminate tax evasion and encourage cross-border trade efficiency⁵¹.

Thus, to start the calculations the policy rules in personal income taxation the first instance is the Luxembourg – Belgium tax agreement⁵². The “Convention for the Prevention of Double Taxation” (1931) is composed from Article (14) that generally describes various types of taxes and workers that need to be paid in one or another country. However, in trying to find the last agreement, which is a modification of the Convention from 2002, it has been identified that it contained no information about the treatment of salaries of cross border workers. No special arrangement regarding to taxation of cross border workers in the relation Belgium-Luxembourg. Fiscal law experts advised that in this case the Art. 15 OECD Model Tax Convention⁵³ needs to be applied. The policy rules on taxation on the exact tax rates and band, allowances and deductions and other tax specifications were taken directly from the national tax regimes and additional discussions were carried out with tax authorities on cross-border work rules.

No rules at the EU level regarding the definition of cross-border workers exist, the division of taxing rights between Member States or the tax rules to be applied⁵⁴. The Recommendation of the European Commission 94/079/EC stipulated that cross-border workers/frontier workers should be taxes as non-resident workers. The main feature is that non-resident persons should benefit from the same tax-treatment as residents, if they obtain the major part of their total income in one Member State⁵⁵. In such situations, the Member State of residence would be allowed to reduce the personal tax advantages

⁵¹ McIntery M., A comparison of UN and OECD Tax Models:

http://faculty.law.wayne.edu/tad/Documents/Teaching_Materials/model_treaties.pdf

⁵² Tax Agreement, (2002).

⁵³ Model Tax Convention, Article 15 “Income from Employment”, paragraph 1: “(..) *salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State*”. <http://www.oecd.org/tax/treaties/1914467.pdf>

⁵⁴ Taxation and Custom Union:

http://ec.europa.eu/taxation_customs/taxation/personal_tax/crossborder_workers/index_en.htm

⁵⁵ Taxation and Custom Union:

http://ec.europa.eu/taxation_customs/taxation/personal_tax/crossborder_workers/index_en.htm

correspondingly in order to avoid that personal allowances could be enjoyed twice.

5. Three layered policy filter

This filter is in place to order the place of policies involved in free movement for work, namely policies on which the welfare of mobile earners depends.

A filter is defined by the Oxford Dictionary as: “process or assess (items) in order to reject those that are unwanted”. In this case, when evaluating the welfare of frontier workers, one needs to keep in mind that their income is defined or passed through three lenses that can be envisioned as a filter that takes out those components in which the policy actor is specialized.

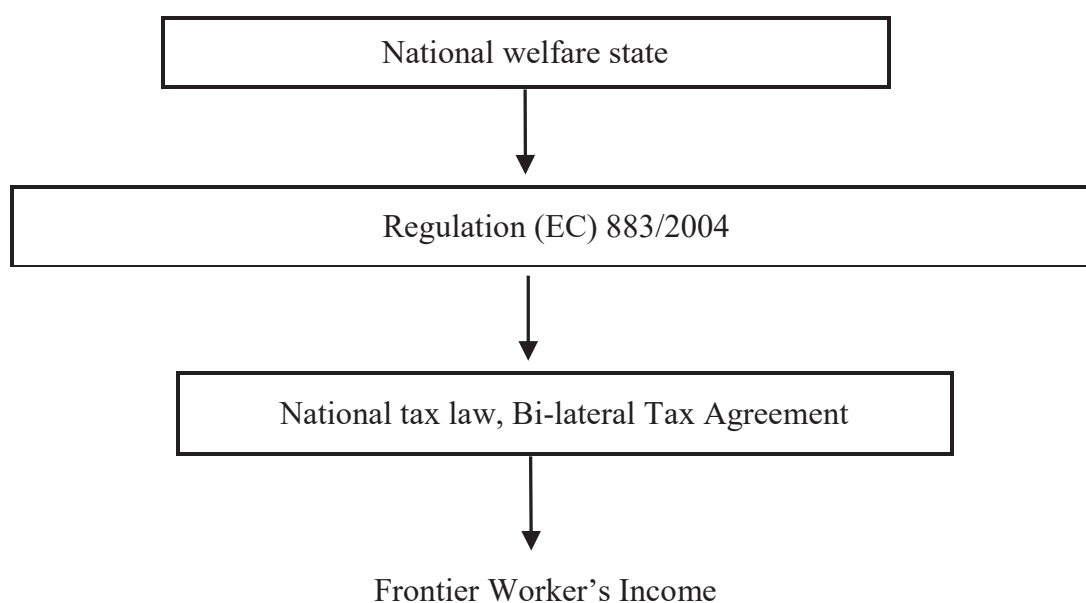


Figure 2. Three-Layered Policy Filter in Free Movement for Work and Welfare

Figure 2 attempts to graphically represent the stages through which the income of frontier workers and also of mobile earners is passing through. It relies heavily on Section 2.4 which concludes that EU law in social security coordination has supremacy over national law; yet national social security law determines in the first instance the conditions of social security benefits. Therefore, the first stage that defines the conditions on what, how and for how long the mobile earner will be granted a social benefit is secured by the national legislation. In the second instance, the amount granted by the national social

security law in the country of residence and of employment is subject of EU law (Regulation (EC) 883/2004) that insures the accumulation of benefits (see ‘principles of social security coordination’). Lastly, but not least, each country defines how the taxes of foreign workers are treated and based on tax agreement between each country involved, the frontier worker is taxed and is allocated allowances or credits, if available.

As we can observe from Figure 2, the European social model is rather dispersed when it comes to welfare representation of mobile earners. It shows that the market income is defined by national laws, but in order to further be taxed, it needs to convey to the rule of non-residents and apply only relevant legislation. The income is ‘subject’ to national tax law and along with granted benefits in the country of residence and employment is finally reaching the consumption basket of a frontier worker.

Figure 2 is in place to show the imperative role of the national legislation, despite the fact that the EU law has supremacy over it and the isolated role of tax policy, despite its crucial attribute in determining the income of mobile earners, as well as redistribution.

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Annexes

Table 3. Migration and Social Security: Legal Instruments used by Council of Europe, International Labour Organization and EU institutions

Name of the organization/ institutions	Name of the Instrument	Main role of the instrument	Year
International Labour Organization ⁵⁶ (ILO) was founded			1919
International Labour Organization ⁵⁷ Section: "With Interim Status"	Equality of Treatment (Accident Compensation) Convention, and Recommendation	Accident Compensation.	1925
International Labour Organization Section: "Outdated Instruments"	Maintenance of Migrants' Pension Rights Convention	Refers to the establishment of an International Scheme for the Maintenance of Rights under Invalidity, Old-Age and Widows' and Orphans' Insurance.	1935
Council of Europe ⁵⁸ (CoE) as the first pan-European organization was founded			1949
Treaty of Paris - European Coal and Steel Community			1951
Council of Europe	European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors - ETS 012	Covers old-age, invalidity and survivor's benefits It provides for nationals of any one of the Parties to be entitled to receive the benefit of the laws and regulations of any other Party, under the same conditions as if person were a national of the latter, providing that certain conditions of residence are fulfilled.	1953
Council of Europe	European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors - ETS 013	Covers sickness, maternity, unemployment, employment injury benefit, death grants and family allowance	

⁵⁶ <http://www.ilo.org/ilolex/english/subjectE.htm#s13>.

⁵⁷ <http://www.ilo.org/ilolex/english/subjectE.htm#s13>.

⁵⁸ <http://www.ilo.org/ilolex/english/subjectE.htm#s13>.

Treaties of Rome in which established the European Economic Community (EEC)			1957
European Economic Community	Regulation (EEC) No. 3/1958 of the Council 16 December [1958] Official Journal 30	Regulations on social security for migrant workers.	1958
European Economic Community	Regulation (EEC) No. 15/1961 of the Council 12 June [1961] Official Journal 1073	Regulation that allowed migrant workers to take a job in another Member State, if, after three weeks, no nationals was available to take the job.	1961
International Labour Organization On "Social Security of migrant workers" Section: "Up-to-Date instruments"	Equality of Treatment (Social Security) Convention	Refers to the Equality of Treatment of Nationals and Non-Nationals in Social Security.	1962
Council of Europe	European Code of Social Security ⁵⁹	Social security was highlighted as one of the means by which to ensure an adequate standard of living for the people of Europe. The Code and Protocol recognize the desirability of harmonizing the social security systems and of establishing minimum requirements that states must satisfy. The aim is to guarantee at least a certain minimum level of social protection. If states wish to provide more than the minimum they are free to do so.	1964
European Economic Community	Regulation (EEC) No. 1612/68 of the Council 15 October 1968 on freedom	Freedom of movement for workers within the Community states that 'mobility	1968

⁵⁹ http://www.coe.int/t/dg3/socialpolicies/source/socialsecurity/shortguide_en.pdf

	of movement for workers within the Community [1968] Official Journal 257/2	of labour within the Community must be one of the means by which the worker is guaranteed the possibility of improving his living and working conditions and promoting his social advancement' ⁶⁰ .	
European Economic Community	Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families [1968] Official Journal of the European Union 257/13	Fixed the provisions governing freedom of movement for workers within the Community.	1968
European Economic Community	Regulation (EEC) No. 1408/71 of the Council on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (Social Security Regulation) [1971] Official Journal L 149/2	This guarantees employed workers, self-employed workers and students the same entitlements to social security provision as nationals of the host Member State. However, only provisions under statutory social protection schemes are guaranteed. These include legislation relating to sickness and maternity benefits, invalidity benefits, old age benefits, survivor's benefits, family benefits and death grants. In general, the worker is subject to the legislation of only one Member State.	1971
European Community	European Convention on Social Security, and Supplementary Agreement of the Convention	a) Equality of treatment; b) determination of applicable legislation; c) maintenance of acquired rights; d) export of benefits.	1972

⁶⁰ <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/mobilityofworkers.htm>

International Labour Organization	Maintenance of Social Security Rights Recommendation	Recommendation concerning the Establishment of an International System for the Maintenance of Rights in Social Security. ⁶¹	1983
Treaty of Maastricht– foundation of the European Union and its pillars (Treaty on European Union (TEU) Maastricht, Official Journal of European Communities, No C-191/1, 29.7.92, 1992)			1993
Council of Europe	Model of Provisions of Bilateral Social Security Agreements	European Social Security Committee prepared a model of bilateral agreement that formed a basis of agreements between signed between Council's of Europe member states. The aim was to create a link between social security systems and the rights of migrants (Niekless & Siedl, 2004).	1994
Treaty of Amsterdam (Official Journal of European Communities, No. C-340, 29.7.92, 1997)			1997
Treaty of Nice – establishment of Open Method of Coordination (OMC) (Treaty of Nice, Official Journal of European Communities, No C-080, P 0001 – 087, 2003)			2003
European Parliament, European Commission	Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] Official Journal of the European Union L 166	New legislative package, on "Modernized coordination"	2004
European Parliament, European Commission	Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the	Presents the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members, the right of permanent residence in the territory of the Member States for	2004

⁶¹ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312505

	Member State amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 75/34/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC [2004] Official Journal of the European Union L 158	Union citizens and their family members, and the limits that can be placed on these rights. ⁶²	
Treaty of Lisbon (Official Journal of European Union, No. C 306/01, 2009)			2009
European Parliament, European Commission	Council Regulation (EU) No. 987/2009 the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing	Contains the implementation procedures which should ensure that benefits are granted quickly and efficiently, despite the wide range of national social security systems.	2009
European Parliament, European Commission	Council Regulation (EU) No. 492/2011 the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union [2011] Official Journal of the European Union L 141/1	Contains the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Union in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health.	2011
European Parliament, European Commission	Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014, Official Journal of the European Union L 128/8	Contains measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.	2014

⁶² European Migration Network:
http://emn.ie/cat_search_detail.jsp?clog=4&itemID=213&item_name=

Table 4. Main Components of Social Security Agreement between Luxembourg and Belgium, (1995)

Benefit	Entitlement conditions	Amount
Sickness and maternity:	Luxembourg establishes each calendar year the percentage that the total benefits in kind provided in Luxembourg to all insured persons and members of their families residing on its territory in relation to annual expenditure, and this percentage may be adjusted according to statutory amendments to intervene; This percentage is applied to health care expenditures made during the following year by the frontier worker and his family members on Belgian territory; if the amount resulting from the transaction exceeds the amount of benefits paid by the Belgian institution Luxembourg allocates an additional amount equal to the difference between these two amounts.	Not provided
Invalidity:	disability benefits under Belgian law, the period during which the frontier worker referred to in Article 2 -. a) must have received the cash payment of health insurance prior to the liquidation of disability in all cases is that in which he received under Luxembourg law that incapacity for work resulting in the disability compensation or monetary illness, instead of those above, the retention of his salary. Expenses incurred, in the early award of disability compensation during the Belgian primary disability working under the Belgian law shall be borne by pension insurance institutions in Luxembourg.	Not provided
Supply of birth:	Frontier workers entitled to benefits of birth under the law of the Contracting Party where he resides irrespective of the territory of both Contracting Parties in which children are born. When the place of residence is in Belgium, the benefit of family allowances scheme Luxembourg shall, for purposes of the foregoing, the equal benefit of family allowances scheme in Belgium. 3. The birth allowances payable under the foregoing provisions shall be paid in Luxembourg by the National Fund of family benefits in Belgium, as appropriate, by the national child benefit for employees or the National Insurance Institute Social Self-employed.	Not provided

Table 5. Cases of tax miss-arrangements of mobile workers

Cecile, 38:

“In 2006, employed by a British NGO, working with the UK-based team, but based in France. British tax wrote an official letter that I could not pay income taxes in the UK, but in France. French tax (authorities) said I should pay in the UK”. (France – UK)

Source: Collected by the author.

Ronald, 67:

“50% fte. in a UK university;

20% fte. in a Dutch university;

How to harmonise social security? Dutch professors are civil servants, UK are not. UK professors do not. UK citizens do not pay social security if they are aged 55 and older. Dutch citizens/ academics seem to continue to pay”. (UK – Netherlands)

Source: Collected by the author.

“Cross-border commuters are taxed on both sides of the border and have to complete two tax return (Ireland-Northern Ireland)”

Source: Nerb et al., (2009).

“Too little information about that topic, tax officials are unfriendly (Poland – Slovakia)”, “The legal framework is still not well known by the workers and employers (Slovenia – Italy)”

Source: Nerb et al., (2009).

“The region in which cross-border workers have to pay taxes only in their home country extends just 10 km on both sides of the border – a ridiculously outdated small strip. This leads to high taxation and hinders cross-border mobility (Spain – France)”

Source: Nerb et al., (2009).