

MoveS seminar Romania

*Workers' and jobseekers' rights in the EU. Posting
under the EU Coordination Regulations: Challenges
and perspectives*

Bucharest, 17 October 2018

Hotel Minerva - Himalaya Hall
2-4 General Gheorghe Manu Str.



Recent developments of the EU legislation in the field of free movement of workers

Bucharest, 17 October 2018

Robertas Lukaševičius

Directorate-General for Employment, Social Affairs and Inclusion

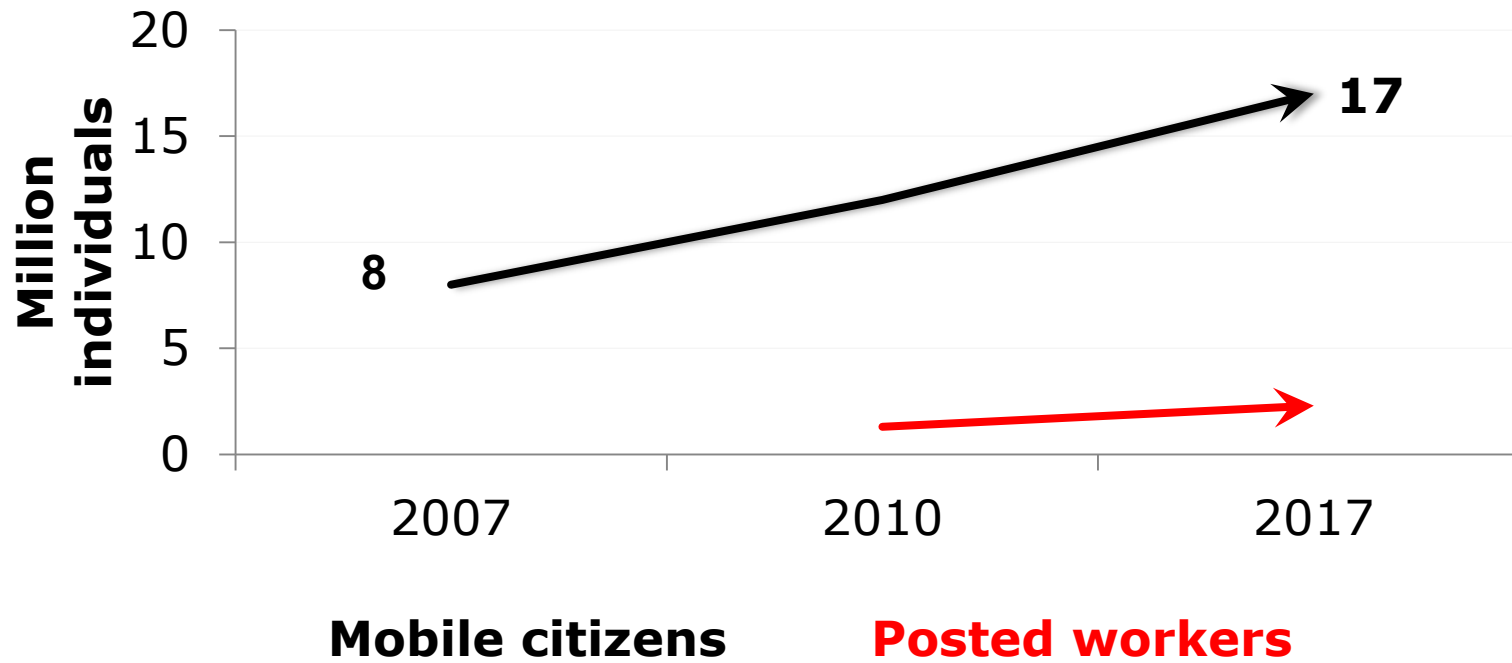
Unit D1 – Free movement of workers, EURES



Free movement of workers/ provision of services

- 1. Transposition of Directive 2014/54 (Enforcement FMOW)*
- 2. Implementation of EURES acquis (Regulation 589/2016)*
- 3. Transposition of portability Directive (2014/50) (supplementary pensions)*
- 4. Revision of the Directive 96/71 (Posting Directive)*
- 5. Transposition of Directive 2014/67 (Enforcement POW)*

Labour mobility in the EU

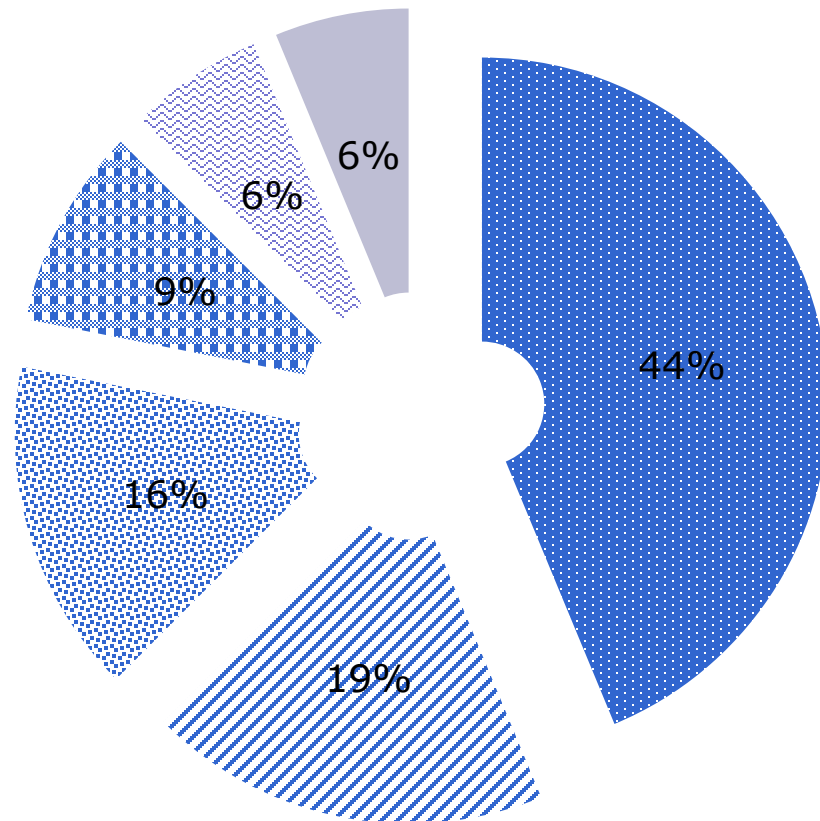




Better enforcement of rights conferred under EU law on free movement of workers

- *Directive 2014/54 aims to facilitate the exercise of rights on Union workers and members of their families in the context of the freedom of movement for workers*
- *The Directive does not create new "substantive" rights for mobile workers*
- *National body or bodies must exist to provide assistance to Union workers (including jobseekers) and their family members*

Types of the bodies



- Equality/ human rights authorities- AT*, CZ, EL, FI*, FR, HR*, IE, IT, LT, MT, NL*, PL*, SK*, RO
- ▨ Employment services- BG, DK, FI*, HR*, HU, LV, SI
- ▩ Ministries- CY, HR*, NL*, PL*, SK*
- ▧ Migration authorities- BE, DE, ES
- ▨ Chambers- AT*, SE
- Labour inspectorate- NL*, PL*



The list of the bodies available online

<http://ec.europa.eu/social/main.jsp?catId=1277&langId=en>



Implementation report

- *To be presented in November 2018*
- *Identifies the main challenges in relation to implementation*
- *Impact of the Directive not easy to assess, but positive*
- *No amendments are necessary*



EURES

- *unique value added of EURES*
- *Implementation phase ongoing-
the Commission has adopted in July two further
implementing decisions related to ESCO and its use for
the purpose of EURES*



Directive 2014/50/EU on supplementary pension rights

- *Aims to further facilitate worker mobility by improving acquisition and preservation of supplementary pension rights*
- *The Directive came into force on 21 May 2014*
- *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive **by 21 May 2018.***



Directive 2014/50/EU- transposition

On 19 July, the Commission launched infringement procedures for non-communication or partial communication for 10 Member States (AT, CY, CZ, GR, ES, FR, IE, LU, NL, RO)

- At present (26/09/2018), 23 Member States declared complete transposition. 1 Member State, IE, declared partial transposition. 4 Member States (GR, FR, CY, LU, RO) did not officially communicate any transposition measures



Directive 96/71/EC

- Directive sets the EU regulatory framework to establish a balance between the objectives of:
 - promoting and facilitating the cross-border provision of services
 - providing protection to posted workers, and
 - ensuring a level-playing field between foreign and local service providers



New Directive 2018/957 amending Directive 96/71 (adopted on 28 June 2018)

- Remuneration (was 'minimum rates of pay')
- Long term posting of 12 (18) months, after which (almost) all terms and conditions of employment of the host Member State apply
- Temporary agency work: user undertaking has to inform TWA of the terms and conditions it applies to its workers
- Reinforced administrative cooperation and improved access to information (eg single website)



Directive 2014/67/EU (Enforcement Directive)

- The 2014 Enforcement Directive has provided for new and strengthened instruments to fight and sanction circumventions, fraud and abuses
- Member States had until 18 June 2016 to transpose the Directive and all Member States have done so
- Commission is now assessing their transposition measures

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Recent developments at EU level

Social Security Coordination

Maria-Luiza van de Westelaken

Social Security Coordination

DG Employment, Social Affairs and Inclusion, European Commission

Bucharest, 17 October 2018



Overview

*** Ongoing revision of Regs 883 and 987**

*** Current initiatives**

- *Electronic data exchange*
- *Anniversaries*
- *ELA*
- *European Social Security Number*



Ongoing revision of EU coordination rules



Scope of the EC proposal

Targeted amendments on:

- Social security of posted workers / work in 2+ MS
- Access of economically inactives to benefits
- Long-term care benefits
- Family benefits
- Unemployment benefits

Latest developments





State of play of the Commission proposal

- Council General Approach confirmed at the EPSCO meeting on 21 June 2018
- Vote in the European Parliament's EMPL Committee planned on 20 November 2018 and on 10-13 December 2018 in plenary (tbc).
- Trilogues expected to start under the Austrian Presidency and continue during first half of 2019 under the Romanian Presidency



Current initiatives



Electronic Exchange of Social Security Information (EESSI) system

- **Key innovation** of the modernised rules of 2010
- IT system that will help social security bodies across the EU exchange information **more rapidly and securely**
- All communication between national bodies using structured electronic documents (SEDs), **replacing paper-based exchanges**
- Covers all branches of social security of Regulation 883/2004
- Will connect electronically around **15.000 social security institutions** of EU Member States & Iceland, Liechtenstein, Norway and Switzerland
- **By July 2019** MS to connect national systems to the central IT platform

2018 - anniversaries



- **50'** anniversary free movement
- **60'** anniversary coordination

European Labour Authority - Towards fair and effective labour mobility

"We should make sure that all EU rules on labour mobility are enforced in a fair, simple and effective way"

European Commission President Juncker, State of the Union Address, 13 September 2017



Objectives of the European Labour Authority



Easier access to information and labour mobility services for individuals and employers



Strengthened cooperation between national authorities in cross-border enforcement, including inspections



Mediation between national authorities or in case of labour market disruptions

The Tasks of the Authority (1 to 3)

- 1) Facilitate access to information by individuals and employers** on rights and obligations and **to relevant services** in cross-border labour mobility situations
- 2) Facilitate cooperation and exchange of information** between national authorities → through National Liaison Officers within ELA
- 3) Coordinate and support concerted and joint inspections** by national authorities (governed under law of MS concerned, possible presence of ELA staff)



The Tasks of the Authority (4 to 7)

- 4) Carry out **analyses and risk assessments** on issues of cross-border labour mobility
- 5) Support **capacity building national authorities** through guidance, mutual learning and training
- 6) **Mediate in disputes between Member States** on the application of EU law concerning labour mobility
- 7) Facilitate **cooperation between relevant stakeholders for cross-border labour market disruptions**, e.g. large scale restructuring



Procedural steps

ELA Regulation

- Adoption by Commission 13 March 2018
- Discussion within the Council
- Discussion within the European Parliament
- Adoption by co-legislators end 2018
- Authority up and running in 2019

Laying the ground for ELA's set up

- Commission Decision establishing Advisory Group for ELA: in place until ELA's set up
- Composed of MS, EU-level social partners, existing agencies



European Social Security Number (ESSN)

- ***Background***

- EP Resolution on the European pillar social rights: for a 'social security card'
- State of the Union address of President Juncker and 2018 Commission Work programme
- Reflected in 'Social Fairness Package' of 13 March

- ***Problem definition:***

- Cumbersome interaction mobile persons – administrations with reliance on paper documents for the verification of social security coverage
- A multitude of national identifiers used for the establishment of social security entitlements of mobile persons



ESSN – Objectives and requirements

- ***Objectives:***

- Facilitate interactions between mobile persons and national administrations/health care providers
- Reduce the length, costs and administrative complexity for national authorities and third parties (e.g. health care providers) to verify the social security coverage in cross-border cases

- ***Key requirements***

- Interoperability national systems
- Real-time
- Information agnostic
- Data protection



Recent CJEU cases in the area of posting/applicable legislation

- 6 February 2018: C-359/16 Altun
- 11 July 2018: C-356/15 Commission v. Belgium
- 6 September 2018: C-527/16 Alpenrind

Altun and Commission v. Belgium

- National courts may, in cases of fraud, disregard social security certificates issued to workers posted within the EU.
- This is the case if the issuing institution fails to carry out a review of the certificate within a reasonable period of time in the light of evidence of fraud that has been brought to its attention.
- The principle of sincere cooperation requires the issuing institution to carry out a proper assessment of the relevant facts and to ensure that the information contained in that certificate is accurate.

Case Alpenrind

- The Court held that PD A1 is binding on both the social security institutions and the Courts of the MS in which the activity is carried out 'apart from cases of fraud or abuse of rights' and 'if appropriate with retroactive effect'.
- The same applies where the two MS have brought the matter before the Administrative Commission and it has concluded that the certificate was incorrectly issued and should be withdrawn.
- A worker who is posted by his employer and who is replaced by another worker posted by another employer must be regarded as 'sent to replace another person' and thus cannot benefit from the special rules.



Obligation to ask and hold a PD A1

- Right to work in another Member State is directly conferred by the Treaty.
- Art 45 TFEU: EU law does not deprive Member State to adopt measures to put those concerned in a position to prove their legal position with regard to the application of the Treaty.
- Posted workers are under obligation to ask for and be issued with a PD A1 since it is required to 'evidence' their affiliation to the social security system of the sending Member State.
- Receiving Member State has a right to 'verify' whether the posted workers are actually and validly affiliated to the social security system of the sending Member State.



maria-luiza.van-de-westelaken@ec.europa.eu

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CASA NAȚIONALĂ DE PENSII PUBLICE

*Provocări pentru instituția competentă
pentru eliberarea formularului A1 în
România*



CASA NAȚIONALĂ DE PENSII PUBLICE

ROL în implementarea Regulamentelor europene și acordurilor bilaterale

1. instituție competentă pentru DLA - lucrători migranți
2. organism de legătură - pensii, ajutoare de deces, de accidente de muncă și boli profesionale
3. punct național de contact în domeniul fraudei și erorilor pentru România - Decizia H 5 din 18 martie 2010 privind cooperarea în domeniul combaterii fraudei și a erorilor în temeiul Regulamentelor (CE) nr. 883/2004 și 987/2009



MĂSURI ADOPTATE LA NIVELUL SISTEMULUI PUBLIC DE PENSII

- Direcția Relații Internaționale - 29 de posturi
- CTP - compartimente de pensii internaționale - 2 posturi



MĂSURI ADOPTATE LA NIVELUL SISTEMULUI PUBLIC DE PENSII

- Proces de restructurare/reorganizare – 2010: reducere posturilor la nivel central cu 42%



ACTIVITĂȚI SPECIFICE

CNPP – DRI

- UNICITATEA LEGISLAȚIEI DE SECURITATE SOCIALĂ APLICABILĂ LUCRĂTORILOR MIGRANȚI



ACTIVITĂȚI SPECIFICE

- emiterea certificatelor de atestare a legislației aplicabile
- justificarea refuzului de a emite astfel de documente
- convenirea excepțiilor de la regulile generale și specifice de determinare a legislației aplicabile
- colaborarea cu instituțiile competente ale celorlalte SM, inclusiv în ceea ce privește combaterea muncii ilegale, a fraudelor și erorilor



ACTIVITĂȚI SPECIFICE

- dispunerea de verificări cu privire la menținerea condițiilor întrunite la emiterea documentelor portabile A₁
- informarea persoanelor interesate cu privire la reglementările aplicabile în acest domeniu, prin orice mijloace de comunicare
- actualizarea cadrului legislativ și procedural în materie
- participarea, directă sau indirectă, prin MMJS sau al Reprezentanței Permanente a României pe lângă UE, la reuniunile/activitățile organizate de CE sau de CUE



PROVOCĂRI – NUMĂR MARE DE SOLICITĂRI - EMITERE DP A₁

Interes crescut al angajatorilor români de a-și extinde colaborarea cu parteneri din străinătate și, în consecință, o tendință de creștere constantă a numărului de solicitări de DLA



PROVOCĂRI – NUMĂR MARE DE SOLICITĂRI - EMITERE DP A₁

Creșterea numărului de cereri este constantă

- **cu 22% în 2008 față de 2007,**
- **cu 50% în 2009, cu 12 % în 2010,**
- **cu 15% în 2011, cu 23% în 2012,**
- **cu 16% în 2013,**
- **cu 10% în 2014 față de anul precedent, tendința de creștere a numărului de solicitări menținându-se și în continuare**



PROVOCĂRI – NUMĂR MARE DE SOLICITĂRI - EMITERE DP A₁

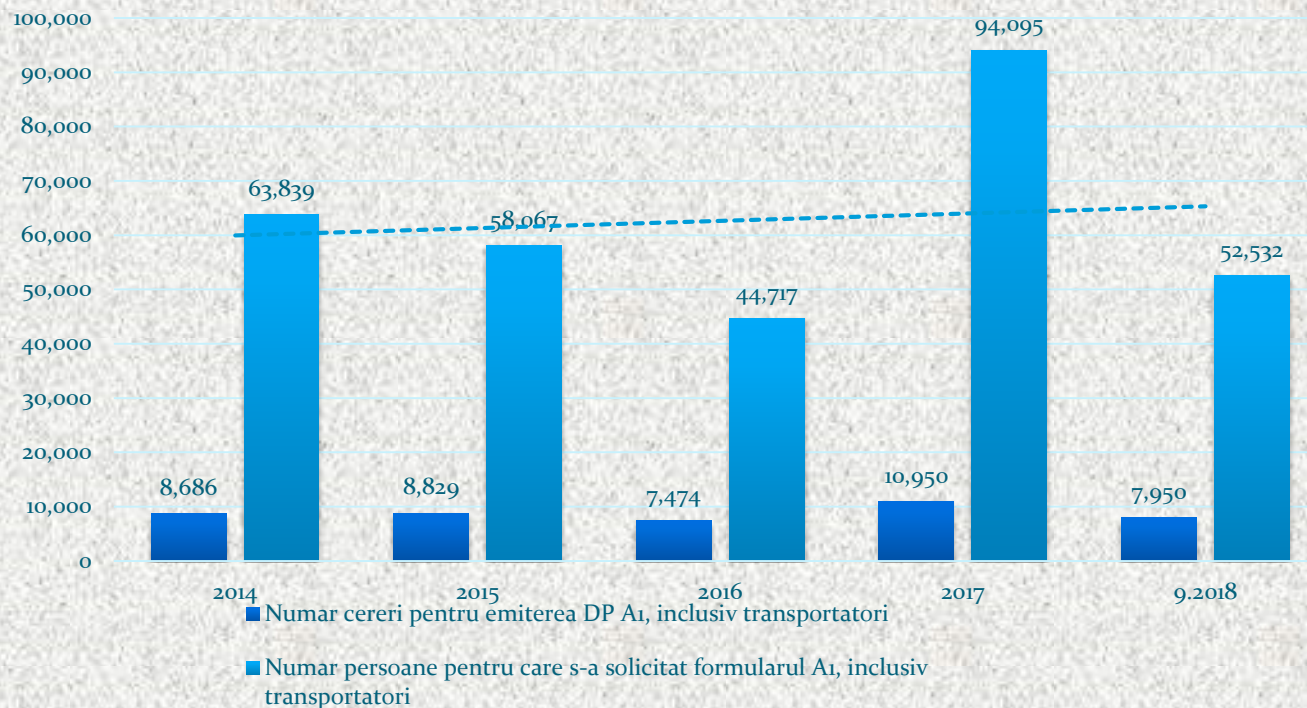
- ❑ 2007 - 10.231 certificate - 29 de salariați
- ❑ 2008 - 13.096 certificate, creștere cu 21,88%
- ❑ 2009 - 26.120 certificate, creștere cu 49,87%
- ❑ ...
- ❑ 2014 - 56.794 certificate - 17 salariați



PROVOCĂRI – NUMĂR MARE DE SOLICITĂRI - EMITERE DP A₁

- Imposibilitatea constituirii unei baze de date cuprinzând titularii de documente portabile A₁ emise de instituția competentă din România
 - ❑ numărul mare de cereri de DLA
 - ❑ fluctuația accentuată a personalului trimis pe teritoriul altor state
 - ❑ volumul supradimensionat al activității

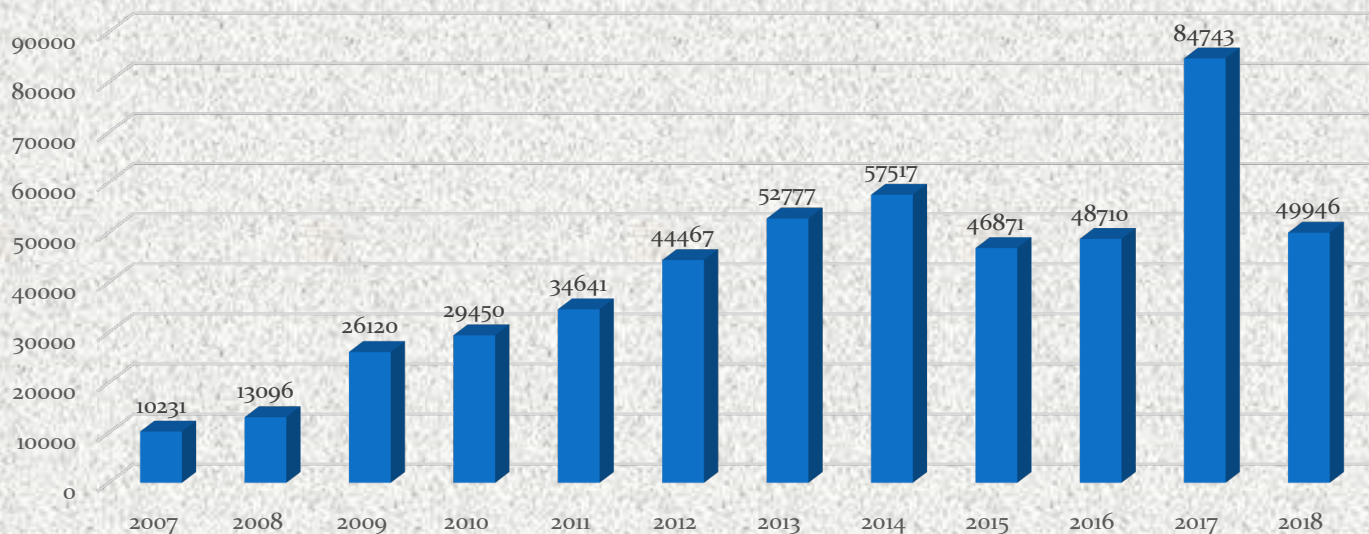
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PROVOCĂRI – NUMĂR MARE DE SOLICITĂRI - EMITERE DP A₁

Nr. documente A₁ emise





PROVOCĂRI - NUMĂR MARE DE SOLICITĂRI - ART. 16 R. 987/2009

- ❑ CERERI DLA – persoane cu domiciliul în România, aflate în situație de pluriactivitate, în contul unui angajator străin
- ❑ Art. 13 alin. (1) R 883/2004



PROVOCĂRI - NUMĂR MARE DE SOLICITĂRI - ART. 16 R. 987/2009

Articolul 16 - Procedura de aplicare a art. 13 R. 883/2004

(1) O persoană care desfășoară activități în 2/MM SM informează instituția desemnată de autoritatea competentă din SM de reședință cu privire la aceasta.

Conform Regulamentului (CE) nr. 987/2009, instituția competentă trebuie să determine, **fără întârziere**, care este legislația aplicabilă persoanelor respective și să informeze instituțiile desemnate din fiecare SM în care se desfășoară o activitate asupra determinării legislației aplicabile cu titlu provizoriu.



PROVOCĂRI - NUMĂR MARE DE SOLICITĂRI TRANSMISE ÎN APLICAREA ART. 16 R 987/2009

- ❑ 2014 – 2015: peste 1.000 cereri
- ❑ 2017: peste 5.500 de cereri



PROVOCĂRI – MODIFICAREA LEGISLAȚIEI NAȚIONALE A ANUMITOR SM

- 2017 - Ca urmare a modificărilor intervenite în legislațiile anumitor SM, persoanelor care desfășoară activități temporare/simultane/alternative pe teritoriul respectivelor state, și care nu plătesc contribuțiile sociale în acele state, inclusiv șoferilor de transport internațional care se deplasează pe teritoriul altor SM/tranzitează teritoriul altor SM, li se solicită deținerea DP A1 la momentul intrării pe teritoriul respectivelor state de ocupare temporară/de tranzit



PROVOCĂRI – MODIFICAREA LEGISLAȚIEI NAȚIONALE A ANUMITOR SM

✓ Șoferii de transport rutier internațional care se deplasează, de regulă, pe teritoriul MMSM UE/SEE/Elveției - art. 13 din Regulamentul (CE) nr. 883/2004 - pluriactivitate.

✓ UNTRR:

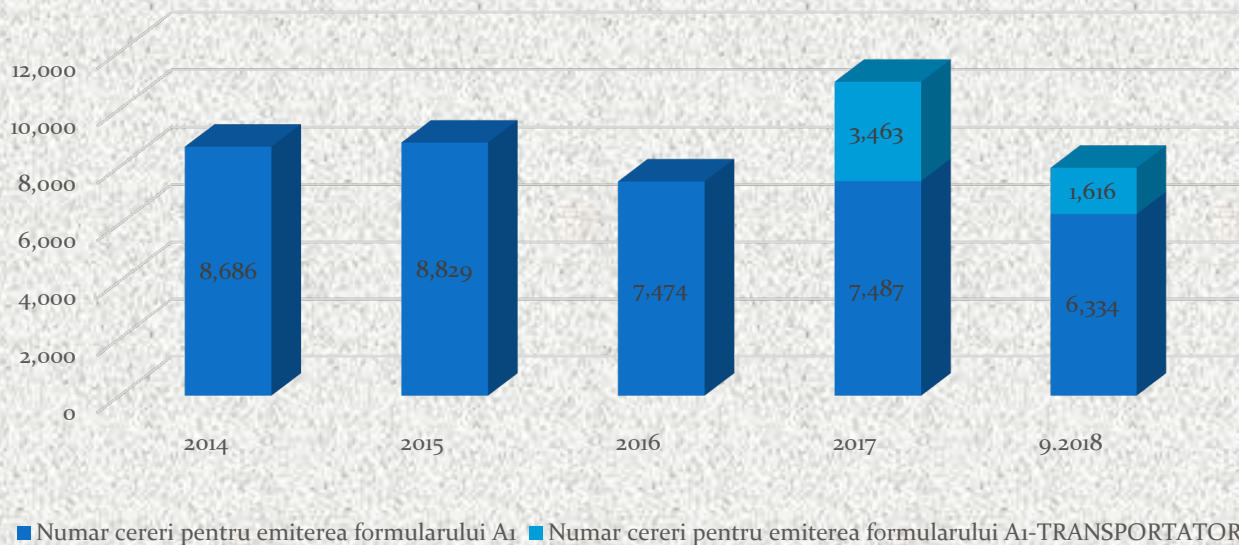
□ în domeniul transporturilor rutiere activează cca. 31.350 companii de transport rutier de marfă național și internațional, operând cca. 140.000 vehicule și circa 4.000 companii de transport rutier de persoane național și internațional, operând cca. 30.000 vehicule,

❖ **CU UN NUMĂR DE CCA. 240.000 ȘOFERI PROFESIONIȘTI ACTIVI**

❖ **(NR. TOTAL AL CERTIFICATELOR DE LEGISLAȚIE APLICABILĂ EMISE DE CNPP ÎN CURSUL ANILOR 2007 – 2014)**

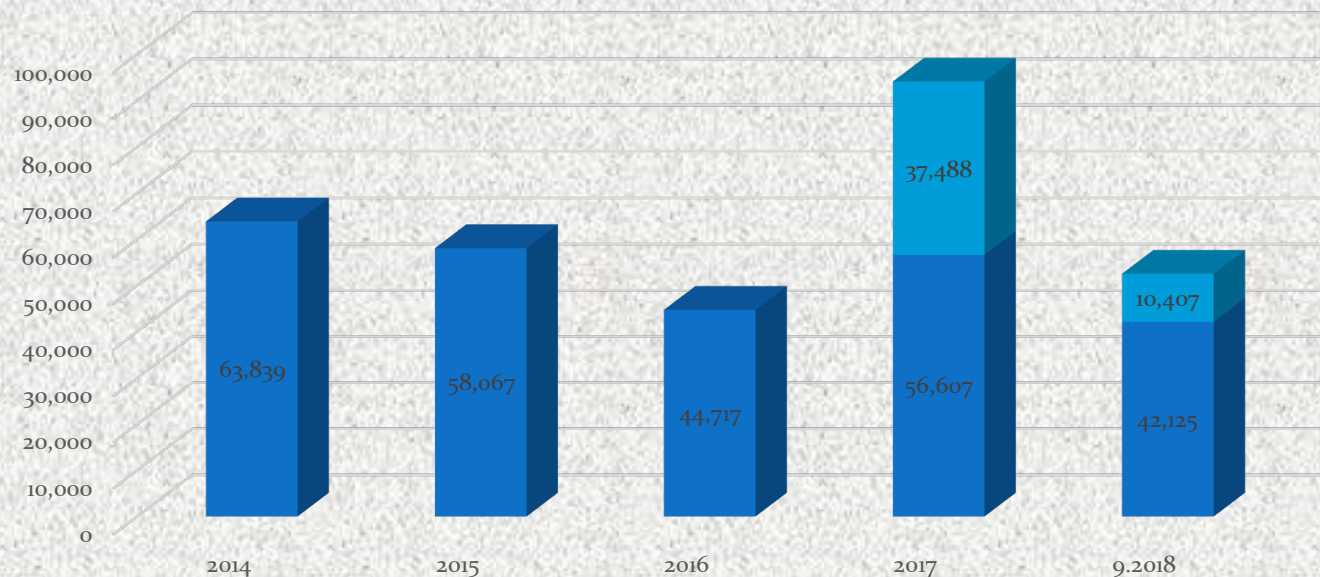


PROVOCĂRI - NUMĂR MARE DE SOLICITĂRI DE EMITERE DE CERTIFICATE DE ATESTARE A LEGISLAȚIEI APLICABILE





PROVOCĂRI - NUMĂR MARE DE SOLICITĂRI DE EMITERE DE CERTIFICATE DE ATESTARE A LEGISLAȚIEI APLICABILE



■ Numar persoane pentru care s-a solicitat formularul A1 - TRANSPORTATORI

■ Numar persoane pentru care s-a solicitat formularul A1



PROVOCĂRI – DIFICULTATEA DOVEDIRII ÎNDEPLINIRII CONDIȚIILOR LEGALE

13 documente, în medie/cerere,

Perioadele de detașare anterioare de care au beneficiat respectivele persoane

În multe situații, dosarele prezentate CNPP sunt incomplete sau conțin documente incorect întocmite sau care ridică suspiciuni

1. se poartă corespondență suplimentară pentru completarea respectivelor dosare
2. activitate suplimentară ce nu este cuantificabilă în număr de cereri de eliberare de DPA1 sau în număr de DPA1 emise
3. demersuri reiterate, fără finalitate

Răspunsuri oficiale de refuz al emiterii de DPA1 pentru situațiile în care nu s-a putut face/nu s-a făcut dovada îndeplinirii tuturor condițiilor legale



PROVOCĂRI – MODALITATEA DE REGLEMENTARE

Anumite condiții impuse la eliberarea DP A1 nu le sunt opozabile fiind prevăzute în documente care nu au caracter obligatoriu

Spre ex: Cifra de afaceri de 25% realizată în România în perioada de referință, condiție detaliată în Ghidul privind legislația aplicabilă



PROVOCĂRI – COMPARAȚIA

❑ Presiuni din partea solicitanților care cer emiterea, cu celeritate, a certificatelor de atestare a legislației aplicabile E 101/A1, invocând probleme în relația cu angajatorul partener din statul de ocupare temporară sau în relația cu autoritățile din acel stat, precum și faptul că în SM de destinație astfel de certificate se emit într-un termen relativ scurt



PROVOCĂRI – IMPLEMENTAREA DECIZIEI A₁/2009

- Creștere a numărului de solicitări de verificare transmise de organele de control ale altor SM, în urma controalelor efectuate la angajatorii străini, parteneri ai angajatorilor români
- CNPP – DRI: IC DLA, PNC fraude și erori



PROVOCĂRI – IMPLEMENTAREA DECIZIEI A1/2009

- Aceste demersuri ale organelor de control din alte SM trebuie tratate, de asemenea, **cu celeritate**, având în vedere că fac obiectul Deciziei nr. A1/2009 , care prevede anumite termene de răspuns
- *Instrumentarea unor astfel de solicitări presupune întreprinderea de demersuri suplimentare pe lângă angajatorii și lucrătorii independenți în cauză, pe lângă alte instituții din România (ANAF, IM) și pe lângă organele de control din străinătate, precum și analize suplimentare ale activității respectivilor angajatori și lucrători salariați/independenți detașați, în lumina noilor constatări ale autorităților celorlalte SM implicate*



PROVOCĂRI – IMPLEMENTAREA DECIZIEI A1/2009

- *Demersurile efectuate în aplicarea Deciziei nr. A1/2009 pot conduce la consecințe deosebit de grave pentru angajatorii și lucrătorii salariați sau independenți implicați:*
- *retragerea certificatelor de atestare a legislației aplicabile emise:*
 - *cu determinarea retroactivă a altei legislații ca fiind aplicabilă*
 - *plata retroactivă a contribuțiilor sociale în noul SM competent, cu suportarea penalităților aferente*



PROVOCĂRI – CETĂȚENII STATELOR TERȚE

- Cereri de emitere de DPA₁ pentru cetățeni ai unor state terțe
- **Persoanele în cauză dețin fie permis de ședere temporară, atestând reședința în România, fie permise de ședere pe termen lung, atestând domiciliul pe teritoriul României**
- R. 1231/2010:
 - Articolul 1
 - R. 883/2004 și R. 987/2009 se aplică resortisanților țărilor terțe care nu fac deja obiectul regulamentelor respective exclusiv pe motive de cetățenie, precum și membrilor familiilor și urmașilor acestora, **cu condiția să aibă reședința în mod legal pe teritoriul unui SM și să fie într-o situație care nu este limitată din toate punctele de vedere la un singur SM**



PROVOCĂRI – PERSPECTIVE

Automatizarea procesului de emitere de DPA₁



PROVOCĂRI – PERSPECTIVE

TRECEREA LA EESSI

De la 1.07.2019 nu vor mai fi permise schimburile de informații de securitate socială pe hârtie, transmiterea informațiilor urmând să aibă loc exclusiv electronic, prin intermediul SED-urilor, cu respectarea BUC-urilor.

Practic, în domeniul DLA în prezent nu utilizăm decât DPA₁.

Pe lângă activitatea de emiteră a DPA₁, vor fi utilizate :

- *12 SED-uri DLA*
- *cu respectarea a 6 BUC-uri DLA, 5 BUC-uri orizontale și a 10 BUC-uri administrative de suport*



PROVOCĂRI – PERSPECTIVE

TRECEREA LA EESSI

Spre ex:

Corespondența - aplicarea art. 16 R 883 - schimb de scrisori și efectuarea de verificări în baza proprie de date

Uneori, pentru eficientizare, un răspuns al CNPP către o instituție corespondentă din alt SM face referire la 400-500 de persoane

Odată cu trecerea la EESSI, vor fi utilizate mm SED-uri și Sub-procese H și AD:

SED A 001, 002, 005, 006, 008, 011

H BUC 01, 02, 05, 06, 07

AD BUC 01, 02, 03, 05, 06, 07, 08, 10, 11, 12



PROVOCĂRI – PERSPECTIVE

TRECEREA LA EESSI

Spre ex:

În acest moment, notificarea detașării se asigură prin transmiterea unui exemplar al DP A1 deja emis

Odată cu trecerea la EESSI, vor fi utilizate mm SED-uri și Sub-procese H și AD pentru notificarea detașării în aplicarea art. 12 R 883/2004

SED A 009

AD BUC 01, 02, 05, 06, 10, 11, 12



PROVOCĂRI – PERSPECTIVE

Propunerea de revizuire a textului Regulamentelor (CE) nr. 883/2004 și 987/2009

Limitarea situațiilor în care o persoană poate beneficia de DPA₁:

- *prelungirea perioadei minime de afiliere la sistemul de securitate socială a SM de origine*
- *introducerea unor reglementări mai restrictive în ceea ce privește posibilitățile de înlocuire a unei persoane detașate cu o alta*
- *introducerea unor reglementări mai restrictive în ceea ce privește procedura de emitere a DPA₁*
- *introducerea unor reglementări mai restrictive în ceea ce privește retragerea DPA₁ (introducerea unor termene foarte strânse în care IC emitentă are obligația de a reacționa la o solicitare de retragere)*

Posting under EU Coordination Regulations: challenges and perspective

Dolores Carrascosa Bermejo

Prof. Dr. Universidad Pontificia Comillas (ICADE) y
Universidad Complutense Madrid (UCM).

Expert in MoveS Network.

Editor in Lefebvre-El Derecho

Posting → **temporary** mobility in the course of a professional activity

Migration → **movement** to find a job abroad

Posted workers can **disrupt the labour/business market**

Of the Member State of origin of the worker

→ **“Posting Member State”**

Less working population available

Of the Member State where the worker is being posted

→ **“Host Member State”**

Posted workers **occupy job vacancies**

Posting generates **international competition between companies**

Different labour costs; Social dumping; Subcontracting...

- I. EU Legal framework of posting
- II. Statistical information
- III. Special conflict-rule for posting workers and EU case-law impact (Article 12 Basic Regulation)
 - A. Posting requirements for employees
 - B. Posting requirements for self-employed workers
- IV. Binding Nature of PD A1 virtuality
- V. Perspectives under future EU coordination Regulations

1. Social Security → Coordination Regulations (1958)

R 883/2004 Art. 12.

- Goals:
- Improve free movement of workers
 - Enhance freedom to provide services
 - Protect workers: uniform insurance record
 - Minimise the administrative burden
- Action:
- Temporary application of **SS Law of posting MS**
 - PD A1** (Exception to *lex loci laboris* - 24 months)
- Consequence: **It may cause social dumping**
- Perspective:
- Amendment **Commission** proposition <COM (2016) 815 Final>
 - Increase requirements and control
 - Council** General Approach June 2018 <2016/0397 (COD)>
 - Pending in **EU Parliament**

2. Labour regulation → **Directives** (1996) + National implementation

Directive **96/71/EC** + Enforcement Directive **2014/67/UE**

- Goals:
- Protect workers: **Prevent social dumping**
 - Enhance fair competition: Combat letterbox companies
 - Maximums standards: no additional requirements by MS
- Action:
- Temporary partial application of **Labour Law of host MS**
(Among others, minimum wage, minimum holidays...)
- Consequence: It may **limit freedom to provide services**
- Perspective:
- New 2018 Directive (aplicable in August 2020)
 - Increase requirements and control:
 - short postings* → *same remuneration* as in host MS
 - long postings* → nearly equal labour conditions
 - Initiative for a **European Labour Authority**

SOCIAL SECURITY ↔ LABOUR

APPROACH

Regulations: Protect workers & promote **freedom to provide services**. They can **cause social dumping**

Directives: Protect workers by **preventing social dumping**
It can **limit freedom to provide services**

PERSONAL SCOPE

Both: EU nationals (also with freedom of movement restrictions)
Third country nationals in regular administrative situations

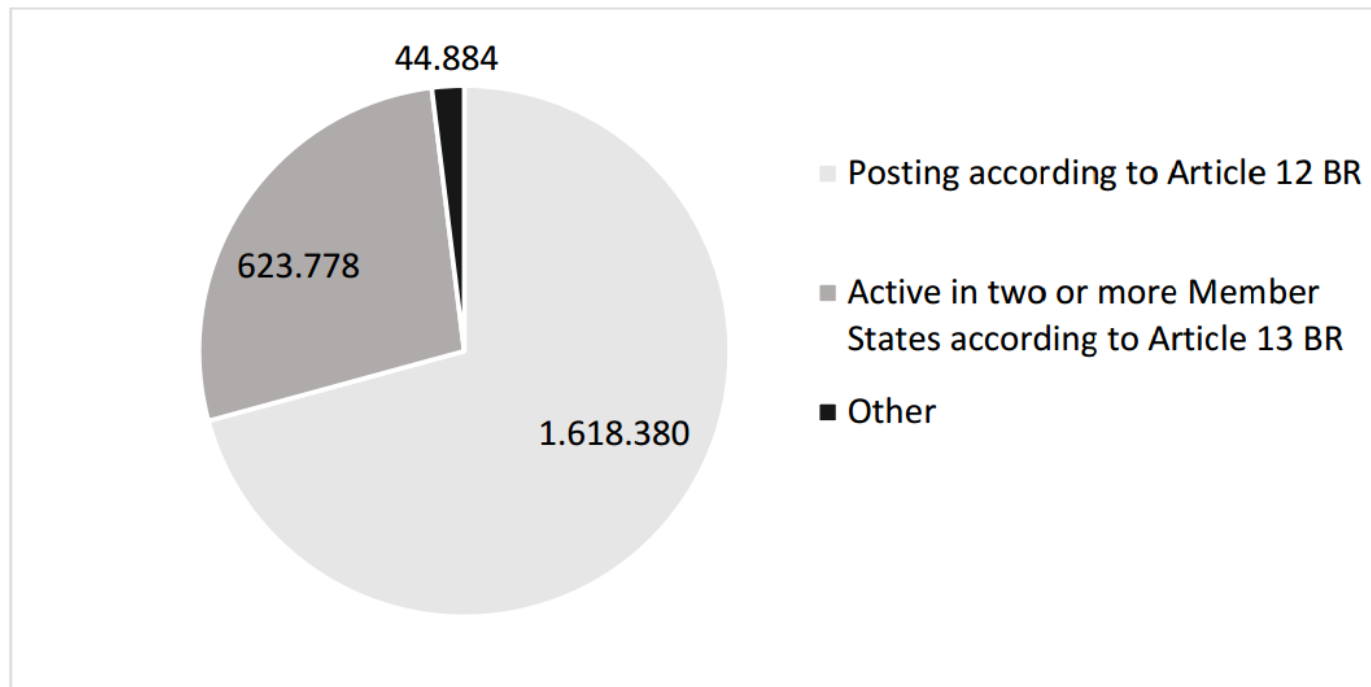
Regulations: **Employees and self employed workers**

Directives: Only **employees**

PERSPECTIVES

Both: **Increase requirements and control**
Freedom to provide services can be affected

1. How many posted workers are there?



60% 1.6 Millions PD A1 = **960.000 posted workers**

893.000 employees + 67.000 self-employed workers

Upward trend: 8.6% increase 2015-2016

35% increase 2011-2016

II. Statistical Information

Source: PD A1 Questionnaire 2017



2. Where are they posted to?

Total	
BE	178,319
BG	3,867
CZ	22,743
DK	15,698
DE	440,065
EE	3,733
IE	5,760
EL	6,383
ES	52,353
FR	203,019
HR	9,835
IT	61,321
CY	972
LV	1,080
LT	2,018
LU	26,591
HU	11,312
MT	2,318
NL	90,873
AT	120,150
PL	17,818
PT	18,109
RO	10,028
SI	5,146
SK	9,694
FI	21,014
SE	39,120
UK	57,226
IS	1,373
LI	842
NO	23,844
CH	104,295
unkn.	56,776
Total	1,623,695

Germany **264,000** posted workers

France **122,000** posted workers

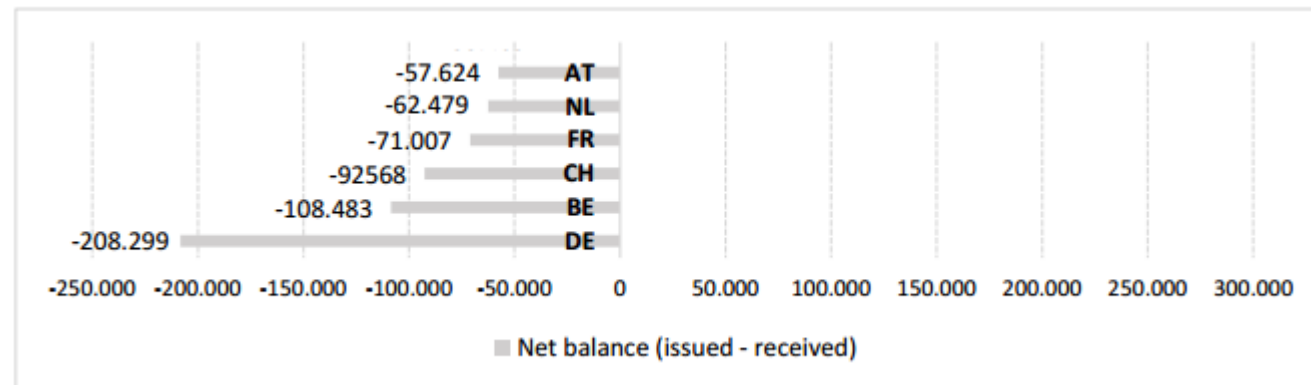
Belgium **107,000** posted workers

In 2011, 14% of **construction** workers were **posted workers**. In **2015, 33%**

Construction minimum wage in Belgium EUR 1,500

Construction average wage in Poland EUR 752

Net receivers



II. Statistical Information

Source: PD A1 Questionnaire 2017



3. Where do they come from?

		Sending Member State																															
	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	IS	LI	NO	CH	Total
Total	69,836	15,656	11,145	6,508	231,766	6,327	3,303	3,941	100,469	132,012	36,142	106,395	169	2,446	25,371	55,364	61,365	110	28,394	62,526	259,999	62,005	48,710	150,922	89,931	3,707	3,611	33,647	126	65	11,727	1,623,695	

56% of posted workers come from **EU-15 MS**; 44% from EU-13-MS

Flow from EU-13 to EU-15 MS; also across EU-15 MS

Main sending MS:

Poland	153,000	→ 1.2% of its employed population
Germany	139,000	
Slovenia	90,500	→ 5% of its employed population
France	79,000	
Italy	64,000	

Romania

Sends 29,200 posted workers; Receives 6,000. Net posting MS

4. In which sectors do they work?

Agriculture, hunting and fishing NACE A	Industry NACE B to F			Services NACE G to T							
	Industry Total	of which Construction NACE F	Services Total	Wholesale and retail trade NACE G	Accommodation and food service activities NACE I	Transportation and storage; Information and communication NACE H and J	of which Freight transport by road NACE H - Group 49.4	Financial and insurance; Real estate; Professional, scientific and technical activities; Administrative and support service activities NACE K, L, M and N	of which Temporary employment agency NACE N - Group 78.2	Education, health and social work, arts and other services NACE P, Q, R and S	of which Human health and social work activities NACE Q
1.5%	69.1%	45.0%	29.4%	2.3%	0.6%	2.4%	0.5%	9.6%	3.2%	12.1%	0.9%

5. How long are they posted?

Average duration per posting (A)	Number of times posted during the year (B)	Average duration per individual posted worker (A*B)
101	1.7	170

III. Special conflict-rule for posting Requirements for its application



Special conflict rule → **exception** to the general rule: *lex loci laboris*
(R 883/204 Art. 12; R 987/2009 Art. 14; AC Decision n^oA2)

A. Requirements regarding posted employees

A.1 Direct relationship posted worker ↔ posting employer
maintained throughout the period of posting. AC n^oA2, points 1.3 and 4:

- *Recruitment* (can be outsourced) and *Employment contract*
- *Payment of the remuneration* (can be delegate per agreement)
- *Authority to dismiss and/or impose sanctions*
- *Authority to determine the nature of the work* (C-35/70 Manpower)
- **No double posting**

A.2 Previous attachment of the posted employee with the Social Security of the posting MS:

- The employee was **already working** for the posting company
- The employee was **recruited to be posted**: insured before **for at least a month** (eventually less). **Any kind of insurance** is valid

III. Special conflict-rule for posting Requirements for its application



A.3 Posting companies: Ordinarily substantial activity in the posting MS for some time before posting (R 987/2009 Art. 14; C-404/98 Plum; AC n°A2, point 1.5):

- *Place of registered office and administration + administrative staff*
- *Place where workers are recruited + applicable law*
- *Place where contracts with clients are concluded + applicable law*

A.4 Anticipated duration of the work \leq 24 months (AC n°A2 point 3):

- *Brief interruptions do not stop the posting period*
- *Same posting period for different undertakings in one host MS*
- *New posting period if the worker is posted to a different host MS*
- *2 months after a posting period ends the counter is reset*

A.5 Replacement ban (AC n°A2, point 3):

- *Replacement before 24 months (illness) does not reset the counter*
- *Replacement after 24 months is not allowed, **even from different companies** (C-527/16 Alpenrind).*

III. Special conflict-rule for posting Requirements for its application



B. Requirements for self-employed workers

Distinguish self-employed posted worker a migrant worker (R 883/2004 Art. 12.2; R 987/2009 Art. 14.3; AC n°2)

B-1. Substantial activity as self-employed in the posting MS for two months (eventually less)

B-2. Able to **continue his activity** in the posting MS: office space, taxes, VAT number, registrations...

B-3. Similar activity in the host MS (can be as employee)

B-4. Anticipated duration of the activity \leq **24 months**

- A self-employed posted worker can replace any another posted worker (employed or self-employed)

The **competent institution** of the posting MS **issues the PD A1**:

- *Attestation*: its national SS legislation is applicable (R 987 Art. 19.2)
- *Preferably issued before the posting* (R 987 Art. 15)
- *Retroactive PD A1 is valid* (C-178/97 Banks; C-527/16 Alperind)

Principle of **sincere cooperation**. PD A1 with **correct information** and **relevant facts** (AC Recommendation n^oA1)

Binding nature of the PD A1: **must be accepted by the host MS**

- *Only the posting MS can withdraw a PD A1 or declare it invalid*
- *A retroactive PD A1 maintains the binding effect* (C-527/16 Alperind)
- In case of **disagreement** (validity or accuracy):
 1. Cooperation and negotiation
 2. Non-binding opinion by the Administrative Commission
 3. Infringement proceedings under the European Court
 4. National courts from the host MS must accept the PD A1 except in case of judgement -proven fraud or abuse- (C-359/16 Altun)

Commission Proposal December 2016

General Orientation June 2018 under discussion in Parliament

What is new?

1. Workers will be no longer be “posted” but “**sent**”
2. **Prior affiliation to Social Security** of posting MS: **3 months**
3. **General replacement ban after 24 months** (including self-employed posted workers, employees and viceversa)
4. **Replacement** before 24 months if the work was not finished
5. General **counter reset period of 2 months** (for a position and a MS, regardless of the posting company)
6. Definition of **fraud: *intentional act or omission to act to obtain or receive SS benefits or avoid paying SS contributions***
7. Clear **procedure** for issuing and withdrawing PD A1
Assessment and certification by issuing institution
Procedure in case of **disagreement**

Thank you for your attention!!

Romanian Seminar Workers' and Jobseekers' Rights in the EU

17 October 2018
Hotel Minerva
Bucharest, Romania

Rights of the Jobseeker in other EU Member States

Maximilian Fuchs

Fuchs 01

The importance of the labour market

prevailing: national organization

Fuchs 02

The preference given to the European Labour Market

The legal structure of the ELM



Fuchs 04

Art. 45 para. 3 TFEU

for reasons of employment

- free movement
- stay

Fuchs 05

The jobseeker's right to stay the Antonissen judgment

Fuchs 06

Directive 2004/38

- Recital 9 and 16
- Art. 14 para. 4 lit. b)
- Art. 7 para. 2 lit. b) and c)

Fuchs 07

Art. 1-6 of Reg. 492/2011
Protection and support of
the entrance to
a foreign labour market

Fuchs 08

The EURES network

Rights of jobseekers to social benefits

two schemes

Reg. 883/2004

national
social assistance
by the host state

Fuchs 10

Art. 64

continuation of the unemployment benefit
by the competent Member State

Fuchs 11

Art. 65

Frontier workers (and similar persons)

Fuchs 12

The right to social assistance

- Art. 24 para. 1 Dir. 2004/38
- Art. 24 para. 2 Dir. 2004/38

Fuchs 13

Benefits under

Art. 3 para. 3 of Reg. 883/2004

Art. 70 of Reg. 883/2004

The case-law of the ECJ

Brey, Dano, Alimanovic, García-Nieto

(Vatsouras-Koupatanzas)

MoveS

EU-wide network
of independent legal experts
in the fields of
free **movement** of workers (FMW) &
social security coordination (SSC)

- Funded by the European Commission (DG EMPL units D1 'FMW' and D2 'SSC')
- 32 countries covered (EU/EEA/CH)
- Implemented by Eftheia, Deloitte Advisory & Consulting, University of Ljubljana, University of Poitiers
- Four-year project (2018-2021)

Network structure and organisation

MoveS

Project Director

Harald Hauben

EFTHEIA

Coordinator

Grega Strban

University of Ljubljana

Assistant Coordinator

Elisa Giacumacatos

Inge Vandenbulcke

EFTHEIA

Steering Group Members

Flash Reports	Information tools	Legal reports	Ad hoc requests	National seminars
Gabriella Berki, University of Szeged	Filip Van Overmeiren Lega (Deloitte)	Jean-Philippe Lhernould University of Poitiers	Gabriella Berki University of Szeged	Kristina Koldinska' Charles University

POOL OF NATIONAL EXPERTS
POOL OF ANALYTICAL EXPERTS

Objective 1

- To provide high-quality legal expertise in the areas of FMW and SSC
 - by means of **Legal Reports**
 - by means of monthly **Flash Reports**
 - by means of **replies to ad hoc requests**

Legal Reports (2018)

▪ **Social Security Coordination**

- ‘Consequences and possible solutions in cases of lump sum payments of pensions, reimbursement of contributions and waiver of pensions’
- ‘Social security coordination and non-standard forms of employment and self-employment - interrelation, challenges and prospects’

▪ **Free movement of workers**

- ‘The legal situation of third country workers in the EU as compared to EU mobile workers’

Flash Report

- Provided to the EC on a monthly basis
- Covering national developments impacting FMW and SSC
- Based on the inputs of the 32 countries of the network

Ad hoc support

- When the investigation of specific issues requires a detailed analysis of the national legal framework

Objective 2

- To disseminate expertise and increase experts' and practitioners' knowledge
 - by organising **seminars**
 - by **sharing information**
 - by **building networks between stakeholders**

Seminars

- Ca. 10 one-day seminars a year
- Audience: Representatives of competent authorities and institutions, social partners, NGOs, judges, lawyers and academics

2018 MoveS seminar calendar

Date	Country
25/5	Italy
11/6	France - SSC
15/6	France - FMW
3/7	Poland
24/9	Czech Republic
28/9	Cyprus
15/10	Belgium
17/10	Romania
26/10	Latvia
15-16/11	Austria

Cooperation and networking

- **MoveS webpage (EUROPA)**

<http://ec.europa.eu/social/main.jsp?langId=en&catId=1098>

- **MoveS LinkedIn group:**

MoveS – free movement and social security coordination

<https://www.linkedin.com/groups/4291726>

Thank you for your attention!

Contact us at:

MoveS@eftheia.eu