

# MoveS seminar Latvia

*Posting of workers in the context of free  
movement and coordination of social security*

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**Riga, 26 October 2018**

*European Union House  
Aspazijas bulvaris 28*



# Recent developments at EU level on social security coordination in relation to posting/applicable legislation

**MoveS seminar  
Riga, Latvia  
26 October 2018**

**Malcolm SCICLUNA  
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Unit D2 - SSC**



# Overview

1. 'Posting' under Regulation 883/2004
2. Comparison of 'posting' under Regulation 883/2004 with 'posting' under Directive 96/71/EC
3. Commission proposal to revise the Regulations
4. Latest developments
  - State of play of the Commission proposal
  - Recent CJEU cases in the area of posting/applicable legislation

# The current legal framework: 'posting' under Regulation 883/2004





## Common questions

- Where do I pay my social security if I am sent by my employer established in one Member State for a 3 day business trip in another Member State?
- I am a freelance technician who simultaneously (or in alternation) works in two (or more) Member States – in which Member State do I pay my social security?
- Which Member State will pay my social security benefits/health care for me and my family members if I am sick?



## Title II – Determination of the applicable legislation

- Title II of Regulation 883/2004 provides a complete and uniform system of conflict rules to ensure that workers moving within the EU are subject to the social security scheme of only one Member State.
- Aim to prevent double/no coverage and to avoid the complications of such a situation.
- The general principle is that the person should be subject to the social security legislation of the Member State of employment.



## ***... good, but not appropriate in every case ...***

- In some cases the application of the general rule might create administrative complications for workers, employers, social security authorities which could impede the freedom of movement of persons and freedom to provide services.
- Special rules are needed to promote the freedom to provide services for undertakings who send workers to a Member State other than that in which they are established.



## Special rules (posting): Article 12

- A person maintains the attachment to the scheme of the Member State in which the employer normally carries out its activities:
  - if the employer:
    - ordinarily performs substantial activities in that Member State
    - maintains a direct relationship with the employee
  - if the employee:
    - is not sent to replace another posted person
    - the anticipated duration of posting does not exceed 24 months



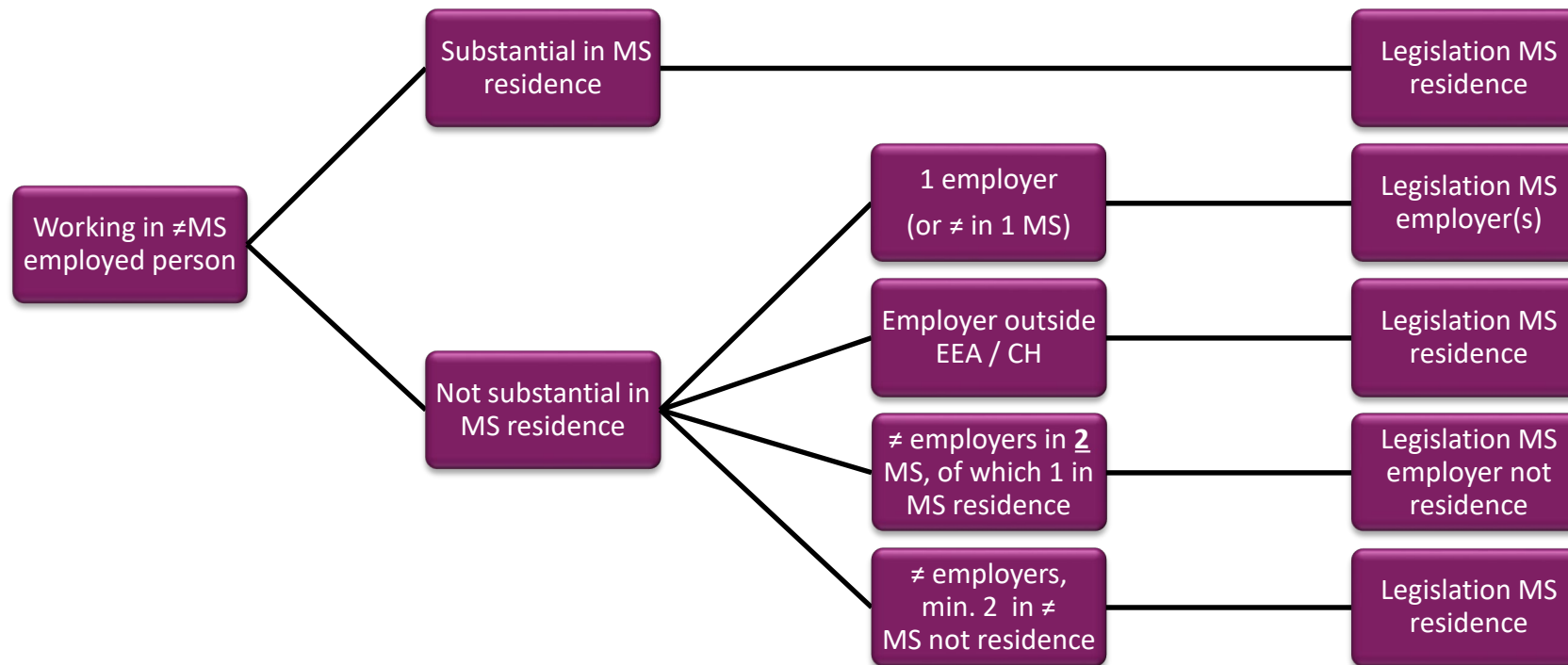


## Special rules (posting): Article 12

- may include a person who is recruited with a view to being posted as long as he/she is subject to the legislation of the Member State in which the employer is established for at least one month
- applies also to self-employed if person is normally self-employed in a Member State and goes to pursue a similar activity in another Member State (two months prior affiliation)

## Activities in two or more Member States: Article 13

A person who normally pursues an activity as an employed person in two or more Member States shall be subject to:



# 'Posting' under Regulation 883/2004 & Directive 96/71/EC



	<b>Posting under Regulation 883/2004</b>	<b>Posting under Directive 96/71/EC</b>
<b>Legal basis</b>	<b>Art 48 TFEU</b>	<b>Art 53(1), 62 TFEU</b>
<b>Aim</b>	<p><b>Free movement of workers</b></p> <p><b>Protection of social security rights of posted workers, overcome obstacles likely to impede free movement of workers, to avoid unnecessary and costly administrative complications.</b></p>	<p><b>Freedom to provide services</b></p> <p><b>Guarantee a set of core rights in force in the receiving Member State (such as pay and work/rest periods), and that the working conditions of posted workers are protected throughout the EU.</b></p>
<b>Action</b>	<b>Temporary application of social security law of sending Member State (exception to <i>lex loci laboris</i>).</b>	<b>Temporary application of certain terms &amp; conditions of employment of receiving Member State.</b>

	<b>Posting under Regulation 883/2004</b>	<b>Posting under Directive 96/71/EC</b>
<b>Personal scope</b>	<b>Employed &amp; self-employed</b>	<b>Workers (employment contract)</b>
<b>Maximum period</b>	<b>24 months</b>	<b>No maximum period, but additional terms &amp; conditions after 12+6 months under the new Directive 2018/957</b>
<b>Attestation required</b>	<b>Portable Document A1</b>	<b>N/A</b>
<b>Notification in sending MS</b>	<b>Yes, whenever possible in advance.</b>	<b>N/A</b>
<b>Notification in receiving MS</b>	<b>No legal requirement in EU law, depends on Member State e.g. Belgium Limosa.</b>	<b>Declaration prior to posting required by many Member States</b>



# Revision of the social security coordination Regulations





# Commission proposal for a revision – COM(2016) 815 final

## Targeted revision to legal text:

- Access to social benefits
- Applicable legislation
- Unemployment benefits
- Long-term care benefits
- Family benefits
- Miscellaneous amendments

## Overall objectives:

- Modernisation by ensuring legal clarity
- A fair and equitable distribution of the financial burden between the Member States
- Administrative simplicity
- Facilitate the exercise of citizens' rights



## Posting - main proposed changes in Reg. 883/2004:

- **Art 12** – *special rules for posted persons*
  - clarification that the term 'posted worker' shall be given the meaning given within Directive 96/71/EC – no change in personal scope.
  - existing prohibition on replacement contained in Article 12(1) for posted employed persons is extended to self-employed persons.
- **Art 76a** – *power to adopt implementing acts*
  - Power to the Commission to adopt implementing acts to establish standard procedures for issuing/withdrawing a Portable Document A1.





## Posting - main proposed changes in Reg. 987/2009:

- **Art 1 – definition of fraud**
  - *'any intentional act or omission to act, in order to obtain or receive social security benefits or to avoid to pay social security contributions, contrary to the law of a Member State'.*
- **Art 5 – legal value of documents**
  - Issued documents only valid if mandatory fields are completed
  - Upon request of receiving institution, the issuing institution is required to review grounds & withdraw/rectify document within 25 working days
  - In case of fraud, retroactive withdrawal of PD A1



- **Art 14** – *details on implementation of Article 13*
  - (5a) new condition that the employer must be carrying out a 'substantial activity' in a Member State for its employees to be subject to the legislation of that Member State – otherwise the legislation of the Member State where the 'centre of interest' is situated applies.
  - (12) new rule for persons residing outside the EU but working in two or more Member States
  
- **Art 16** – *procedure for the application of Article 13*
  - employer can initiate request on behalf of employee, and the institution where employer is established shall also be informed of the decision
  - provisional determination only where institution of residence determines that legislation of another Member State applies.

# 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



## 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



## Recalling main elements from previous judgments

- Article 4(3) TEU 'sincere cooperation' - obligation on the issuing institution to carry out a proper assessment of the facts and ensure that the information contained in certificate is correct.
- PD A1 binding effect - if not withdrawn or declared invalid, the receiving MS cannot subject the worker in question to its own social security system.
- Disputes to be settled via a dialogue between the competent institutions of the Member States concerned.
- In case no agreement, matter referred to the Administrative Commission
- If the Administrative Commission does not succeed, the host Member State can bring infringement proceedings under Article 259 TFEU.



## Case Altun and Case 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.





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Visit us @ <http://ec.europa.eu/social>

# MoveS

Neatkarīgo ekspertu ES mēroga tīkls  
darbinieku brīvas pārvietošanās un  
sociālās drošības koordinācijas  
jautājumos

- Finansētājs - Eiropas Komisija (DG EMPL D1 un D2 nodaļas)
- 32 valstis iesaistītas (EU/EEA/CH)
- Īstenotāji: Eftheia, Deloitte Advisory & Consulting, University of Ljubljana, University of Poitiers
- Četru gadu projekts (2018-2021)

# Tīkla struktūra un organizācija

## MoveS

### Projecta direktors

Harald Hauben

EFTHEIA

### Zinātniskais koordinators

Grega Strban

Ļubļanas Universitāte

### Koordinatora palīgs

Elisa Giacumacatos

Inge Vandenbulcke

EFTHEIA

### Vadības grupas locekļi

Aktualitāšu ziņojumi	Informatīvie rīki	Juridiskie ziņojumi	Ad hoc pieprasījumi	Nacionālie semināri
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

Nacionālie eksperti

Analītiskie eksperti

# 1.mērķis

- Nodrošināt augstas kvalitātes ekspertīzi darbinieku brīvas pārvietošanās un sociālās drošības koordinācijas jomās
  - **Juridiskie ziņojumi**
  - **Aktualitāšu ziņojumi**
  - **Atbildes uz *ad hoc* pieprasījumiem**

# Juridiskie ziņojumi (2018)

## ▪ Sociālās drošības koordinācija

- Vienā maksājumā izmaksātās pensijas, veikto iemaksu atgriešana un pensijas izmaksas pārtraukšana: ietekme un iespējamie risinājumi
- Sociālās drošības koordinācija un nodarbinātības un pašnodarbinātības nestandarta formas: sakarības, izaicinājumi un virzība

## ▪ Brīva darbinieku pārvietošanās

- Trešo valstu pilsoņu tiesiskā situācija salīdzinot ar ES mobilajiem darbiniekiem

## Aktuālie ziņojumi

- Iesniegti EK ik mēnesi
- Atspoguļo attīstību dalībvalstīs jomās, kam ietekme uz DBP un SDK
- Pamatojas uz 32 valstu nacionālo ekspertu ziņojumiem

## Ad hoc atbalsts

- Ja specifiskas tēmas izpēte prasa detalizētu dalībvalstu tiesiskā regulējuma analīzi

## 2.mērķis

- Vairoto ekspertu un praktisko lietotāju zināšanas
  - **organizējot seminārus**
  - **izplatot informāciju**
  - **veidojot lietotāju viedokļu apmaiņas tīklus**



# Semināri

- Apmēram 10 vienas dienas semināri katru gadu
- Auditorija: pārstāvji no kompetentām institūcijām, sociālie partneri, NVO, tiesneši, juristi un pētnieki

# 2018 MoveS semināru kalendārs

Date	valsts
25/5	Itālija
11/6	Francija- SSC
15/6	Francija - FMW
3/7	Polija
24/9	Čehija
28/9	Kipra
15/10	Beļģija
17/10	Rumānija
26/10	Latvija
15-16/11	Austrija

## Sadarbība un tīkli

- **MoveS interneta lapa (EUROPA)**

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

- **MoveS LinkedIn grupa:**

MoveS – free movement and social security coordination

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

# Paldies par uzmanību!

Varat ar mums sazināties:

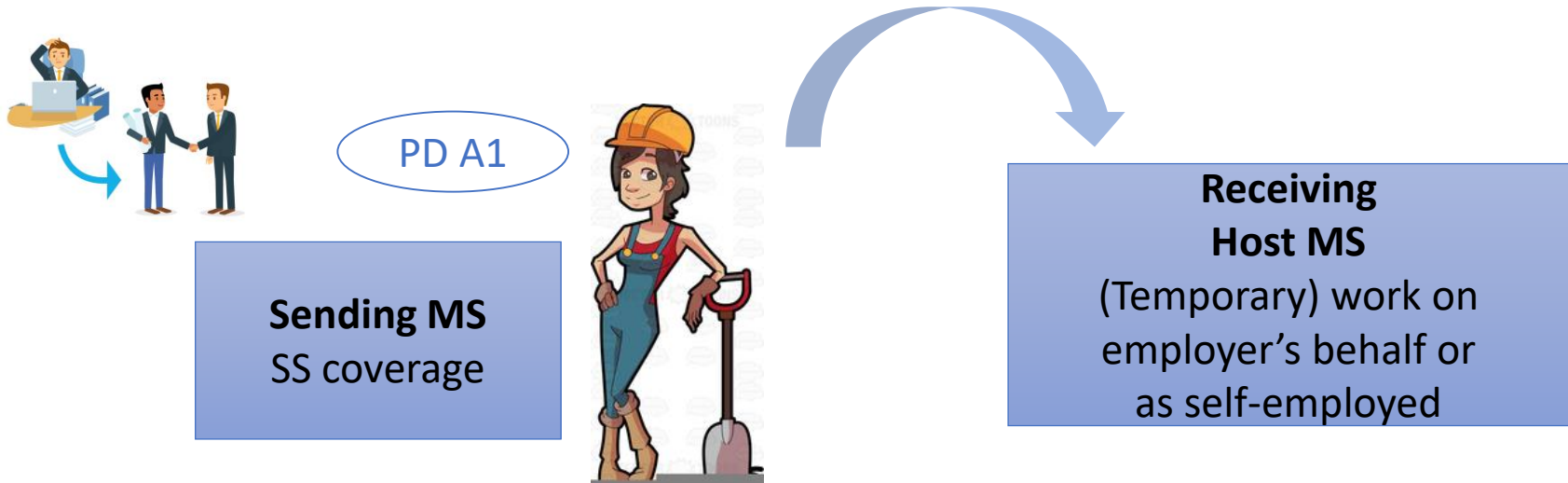
[MoveS@eftheia.eu](mailto:MoveS@eftheia.eu)

# Probative value of A1(E101) & the duty of cooperation

**Ivana Vukorepa**

Associate Professor, University of Zagreb

# Mostly associated with posting ...



Advantages	Concerns
<p>Promotion of market integration (FM services and workers)</p> <p>Avoidance of admin. complications</p> <p>Legal certainty ? (legal value/ binding effect A1)</p>	<p>Social dumping / Unfair competition</p> <p>(Un)equal treatment</p> <p>Not all posting registered</p> <p>Abuse and fraud</p> <p>Incomplete investigation (letter box co. etc. )</p>

# PD A1 in numbers



<b>General data:</b>	<ul style="list-style-type: none"> <li>• 2.3 million (2016), flagship MS:             <ul style="list-style-type: none"> <li>• sending MS: DE, SI, FR, ES</li> <li>• host MS: DE, FR, BE</li> </ul> </li> <li>• LV → HR: 0;</li> <li>• HR → LV: 23 in 2016, and 16 in 2017 (majority in industry)</li> </ul>
<b>Accounting for</b>	0.6% of total EU employment, 0.4% in full-time equivalent
<b>Trends</b>	<ul style="list-style-type: none"> <li>• Increase by 41% btw. 2010 and 2015, by 12% to 2016</li> <li>• Self-employed: 7%</li> <li>• Concentration in the construction sector (45% for employed p.)</li> </ul>
<b>Average duration</b>	<ul style="list-style-type: none"> <li>• 101 days (but varies among MS)</li> </ul>
<b>Withdrawals</b>	<ul style="list-style-type: none"> <li>• Less than 1% of the total number of A1s</li> <li>• DK (6), HU (529), PL (2,050), PT (300), IS (1)</li> <li>• No figures collected on withdrawal requests (from host MS)</li> </ul>

Source: EC (HIVA, KU Leuven) and Croatian Pension Insurance Institute

# Outline

## **1) De lege lata**

## **2) Case law – recent developments** (in the light of fraud / abuse / error)

## **3) De lege ferenda**



# Legal context



Area	Relevant leg.	Art. / Rules		
Labour law	D 96/71	Posting Directive		
	D 2018/957	Amending Posting Directive		
	D 2014/67	Enforcement directive (Arts. 3 and 4, and 6 – 8 on admin. cooperation, 9)		
	R 1024/2012	Administrative cooperation (IMI system)		
Social security coordination	BR 883/2004	12	Applicable leg. (deviation from <i>lex loci laboris</i> , max. 24 m. )	
		13	Pursuit of activity in two or more MS	
		16	Exception by common agreement (in the interest of worker or SE)	
	IR 987/2009	5	Legal value of documents (procedure when doubt, AC D A2) Principle of sincere cooperation (Art. 4/3 TEU)	
		14	Details /clarifications regarding Art. 12 and 13 of BR	
		15	Procedures for application of Art. 12 BR	
		19	Provision of information / attestation of applicable legislation (A1)	
		76	Cooperation between institutions (interpret. and application of BR)	
	AC Decisions	A1	Dialogue and conciliation procedure (validity of documents)	
		A2	Interpretation of Art. 12 BR, and 14(1) IR	
		A3	Aggregation of uninterrupted posting periods	

# Legal context: conditions /limitations (Art. 12 BR, 14 IR, AC D A2)



Employees (E)	Self-employed (SE)
<b>Employer <u>normally carries out his activities</u> in the sending MS</b>	Normally pursues self-employment activity in MS
<b>Sent to work <u>on employer's behalf</u></b> (direct relationship)	Goes to pursue <u>similar activity</u> (nature of the activity, not designation E/SE)
<b>Not replacing previously posted worker</b> (prevents chain-posting)	- (can be problematic when bogus SE)
<b>Anticipated duration: max. 24 months</b> • Prevents permanent work, but • New posting: after min. 2 months (D A2)	+  -
<b>Previously subject to the legislation of the sending MS</b> • 1 month rule (D A2, Art. 1/3) • for shorter p. case-by case evaluation	+  • 2 months rule (D A2, Art. 2) • for shorter p. case-by case evaluation

# Relevance of A1 (1)

- **Statement of applicable legislation**  
(Art. 19 IR)
- **Situations covered:**
  - **Posting** (Art. 12. BR)
  - Work in several countries at the same time in various or same capacities (Art. 13 BR)
  - Derogation from standard rules (e.g. Art. 16 BR)

# Relevance of A1 (2)

- **Not constitutive condition of posting**
  - from wording of Art. 12 of BR
- **Does not create any right nor legal relationship**
- **Proof**
  - by the issuing MS that its legislation remains applicable)
- **Issuance**
  - before posting (but also during or after with retroactive effect)
- **Validity until:**
  - expiry date (indicated in the form), or
  - withdrawal (declaration of invalidity) by the issuing institution
- **Binding effect if granted, but what if its validity/ accuracy disputed?**
  - Sincere cooperation between institutions
  - Case law ....

# Case law (earlier, regarding E101 and A1)



Cases	Decision
C-2012/97 (2000) <b>Fitzwiliam Tecnical Services</b>	<ul style="list-style-type: none"> <li>• <b>Binding on the SS institutions of other MS</b></li> <li>• <u>If other MS raises doubts</u> (regarding correctness of facts or legal assessment), the <u>issuing institution must re-examine grounds</u> and <u>where appropriate withdraw</u></li> </ul>
C-178/97 (2000) <b>Banks</b>	<ul style="list-style-type: none"> <li>• Same + <b>May have retroactive effect</b> (may be issued during or even after posting period expired,</li> </ul>
C-2/05 (2006) <b>Herbosch Kiere</b>	<ul style="list-style-type: none"> <li>• <b>Binding effect</b> on comp. institutions <b>and courts</b>, as long as not withdrawn or declared invalid</li> <li>• <b>Courts not entitled to scrutinize its validity</b> (regarding matters on the basis of witch it was issued)</li> </ul>
C-620/15 (2017) <b>A-Rosa Flussscchiff</b>	<ul style="list-style-type: none"> <li>• <b>Binding on the SS institutions and courts</b>, even if courts found that workers activities outside material scope of provisions relevant for the issuance of E101</li> </ul>
C-474/16 (2017) <b>Belu Dienstleistung</b>	<ul style="list-style-type: none"> <li>• Interprets Art. 19 IR, and confirms A-Rosa Flussscchiff</li> <li>• <b>A1 binding on SS institutions and courts</b> , even if workers activities outside scope of Art. 12 of BR</li> </ul>

# Case law (new developments in 2018)

Cases	Ruling
<p>C-359/16 (2018) <b>Altun</b></p> <p><i>paras 49-53, 61</i></p>	<ul style="list-style-type: none"><li>• <b>Sincere cooperation</b> implies <b>mutual trust &amp; diligent investigation</b></li><li>• <b>Host MS courts may, in cases of fraud, disregard SS certificate</b></li><li>• <u>Conditions:</u><ul style="list-style-type: none"><li>• <u>issuing institution fails to carry out a review within a reasonable time</u> in the light of evidence brought to its atten.</li><li>• Right to fair trial should be safeguarded (right to rebut),</li><li>• Findings of <u>fraud</u> should be based on a <u>consistent body of evidence</u> that satisfies <u>objective (Reg. conditions)</u> and a <u>subjective factors (intention of the parties)</u></li></ul></li></ul>
<p>C-356/15 (2018) <b>Belgium</b></p>	<ul style="list-style-type: none"><li>• BE legislation entitling application of BE legislation unilaterally in the case of abusive use of A1</li><li>• Contrary to Art. 11(1), 12(1) and 76(6) of BR and Art. 5 IR</li></ul>
<p>C-529/16 (2018) <b>Alpenrind</b></p> <p><i>Paras 46, 47, 62-64, 77</i></p>	<ul style="list-style-type: none"><li>• Interprets Art. 5(1) BR</li><li>• <b>A1 binding effect</b> on SS institutions and courts as long as not <b>withdrawn or declared invalid (+ retroactive effect)</b></li><li>• Even if matter brought before AC, that declared A1 issuance incorrect (<b>AC decision status of opinion</b>)</li><li>• <b>Fraud and abuse ???</b> - seems to stay exceptions (para 46)</li></ul>

# Case law (pending cases)

Cases	Questions raised
<p><b>C-370/17</b> <b>CRPNPAC</b></p> <p>- inv. Vueling Airlines - payment of pension contributions</p>	<p>Preliminary question by French Court of Appeal</p> <ul style="list-style-type: none"><li>• <u>Preservation of the binding effect of E101, if court of the receiving MS established in its final decision that E101 was obtained as result of fraud and error</u></li><li>• If yes, then <u>does the issuance of E101 prevents victims of employer's fraudulent conduct from being compensated for damages</u></li></ul>
<p><b>C-37/18</b> <b>Vueling Airlines</b></p>	<p>Preliminary question by French <i>Cour de Cassation</i></p> <ul style="list-style-type: none"><li>• Application of <i>A-Rosa Flussschiff</i> interpretation in the case of <u>concealed employment</u></li><li>• <i>(? but new case-law in the meantime, Altun &amp; Alpenrind)</i></li><li>• Validity of <u>E101 if obtained fraudulently</u></li><li>• <u>Payment of damages</u> to worker if employer convicted in criminal proceedings for concealed employment</li></ul>

# Principle of sincere cooperation (based on legislation and case law)

- Art. 4 (3) TEU - mutual respect and assistance
- Art. 5 IR - Legal value of documents (procedure when doubt, D A2)
- Art 76 IR - cooperation between institutions

## What does it mean for ....

### • Issuing institution (sending MS):

- Proper assessment of the relevant facts & information accuracy
- Guaranteeing correctness of information
- In the case of doubt by the requesting institution:
  - Reassessment
  - Reconsider the grounds for the certificates' issuance

### • Receiving (host) MS

- Bound by the A1/ E 101 (except when fraud and error?!)
- Ask for annulment, withdrawal, or declaration of invalidity
- If no agreement → Administrative commission – conciliation
- Infringement proceedings under Art. 259 TFEU

Mutual trust



# De lege ferenda (1)

## Proposed revision of SSC rules regarding posting

- **Council agreed its negotiating position**

- On 21<sup>st</sup> June 2018 (2016/0397 (COD))

- **Purpose of changes**

- ensure legal clarity and combat fraud

How?

Period of prior affiliation with ending MS legislation

- min. 3 months (↑)

Period btw. consecutive postings:

- min. 2 months

Employer's registered office or place of business

- Clear criteria for determining its location

Enhancement of the cooperation procedure

- possibility for retroactive withdrawal or rectification

# De lege ferenda (2)

## Proposed revision of SSC rules regarding posting

### Art. 12 BR (posting – applicable legislation)

- Introduces replacement posting - but total max. 24 months
- Changes to Art. 14 IR (periods of prior affiliation etc.)

### Art. 75a BR

- obligation of competent authorities to ensure that their institutions apply provisions (even AC decisions)

**Art. 76a BR** - Comm may adopt impl. acts ensuring uniform application of Art. 12 and 13 BR

**Art. 76b BR** - examination procedure (insurance for MS of Commission's power under 76b)

**Art. 1 IR** - introduces definition of fraud

### Art. 5 IR (validity and cooperation procedure)

- If mandatory information missing – 30 days to correct – if issuing institution fails to rectify the document, requesting institution may disregard it, as if never issued
- If doubt about validity → cooperation procedure → AC decision
- Effect of AC decision → MS (authorities and institutions) → “necessary measures to apply such decisions” (*deals with the „problem“ in Alpenrind*)

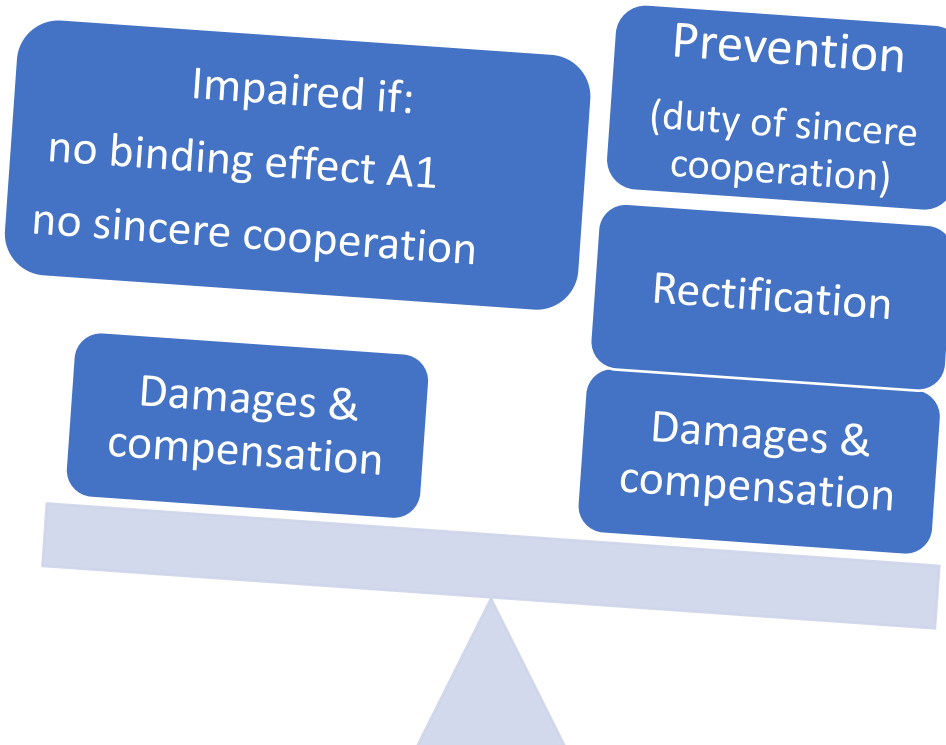
### Art. 19 and 19 a

- Cooperation in case of doubts about the validity of issued documents

# Conclusions (1)

**Legal certainty**  
(coordination rules)

**Fraud / abuse /error**  
(mainly LL concerns, but  
also taxation and SS)



# Conclusions (2)

## **A1 contains presumption of proper affiliation and binding effect for other MS**

- Long term consistency in case law
- Purpose: Legal certainty →(? impaired recently ?)

## **Recent case law and revision proposal:**

- Nuances the “untouchable” effect (when fraud or abuse coupled with lack of cooperation)
- Balancing btw. the need of legal certainty and prevention of fraud and abuse

## **Future challenges:**

- Codification of recent and upcoming case-law?
- MS having deficits in financing their SS?
- Administrative complications (increasing)
- Is it time for unified SS and taxation system?

# Thank you for the attention!

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# Darbinieku tiesības nosūtīšanas gadījumā. Darba tiesības

Asoc.prof., Dr.iur. Kristīne Dupate  
MoveS un ELLN nacionālā eksperte

# Prezentācija

- Minimālās nosūtītajiem darbiniekiem nodrošināmās tiesības. Piemērojamais (valsts) likums
- Problēmjaautājumi:
  - pagaidu darba aģentūras un nosūtīšana
  - jēdziens “minimālā darba alga” nosūtīšanas gadījumā
  - “minimālā darba alga” un komandējuma nauda
  - informācijas par “minimālo darba algu” pieejamība
  - komandējums un nosūtīšana

# Minimālās nosūtītajiem darbniekiem nodrošināmās tiesības

- Darba likuma 14.<sup>1</sup> pants (Direktīvas 96/71/EK 3(1).pants):
  - maksimālo darba un minimālo atpūtas laiku;
  - minimālo apmaksāto ikgadējo atvaļinājumu;
  - minimālajām algas likmēm, to skaitā likmes par virsstundām; šo apakšpunktu nepiemēro darba pensiju papildu sistēmām;
  - darbaspēka no nodrošināšanas aģentūrām nodarbināšanas nosacījumiem;
  - veselības aizsardzību, drošību un higiēnu darbā;
  - aizsardzības pasākumiem attiecībā uz grūtnieču vai sieviešu pēcdzemdību periodā, bērnu un jauniešu darba noteikumiem;
  - vienlīdzīgu attieksmi pret vīriešiem un sievietēm un citus diskrimināciju izslēdzošus noteikumus.
- Piemērojamais (valsts) likums – uzņemošās valsts tiesiskais regulējums



# Pagaidu darba aģentūras un nosūtīšana

- Viens no darbinieku nosūtīšanas veidiem – darbaspēka nodrošināšanas pakalpojuma sniegšana (pagaidu darba aģentūras) (*DL 14(1)(3).pants; Direktīvas 96/71/EK 1(3)(c).pants*)
- Minimālā alga (*Direktīva 96/71/EK 3(1)(c).pants*) vai tāda pati alga, kā darbaspēka pakalpojuma saņēmēja tiešajiem darbiniekiem (*Direktīvas 2008/104/EK 5.pants*)?

# Jēdziens “minimālā darba alga” nosūtīšanas gadījumā

- Tikai uzņemošajā valstī noteiktā «minimālās alga»:
  - var nebūt universāla (kā Latvijā)
  - var būt atkarīga no sektora, profesijas, kvalifikācijas, izglītības, veicamā darba rakstura utt.
  - var būt noteikts, vai minimālā alga aprēķināma uz stundu vai gabala darba likmes pamata
  - var būt noteikta parastās minimālā darba alga atšķirīga – “minimālā alga nosūtīšanas izpratnē”

# “Minimālā darba alga” un komandējuma nauda

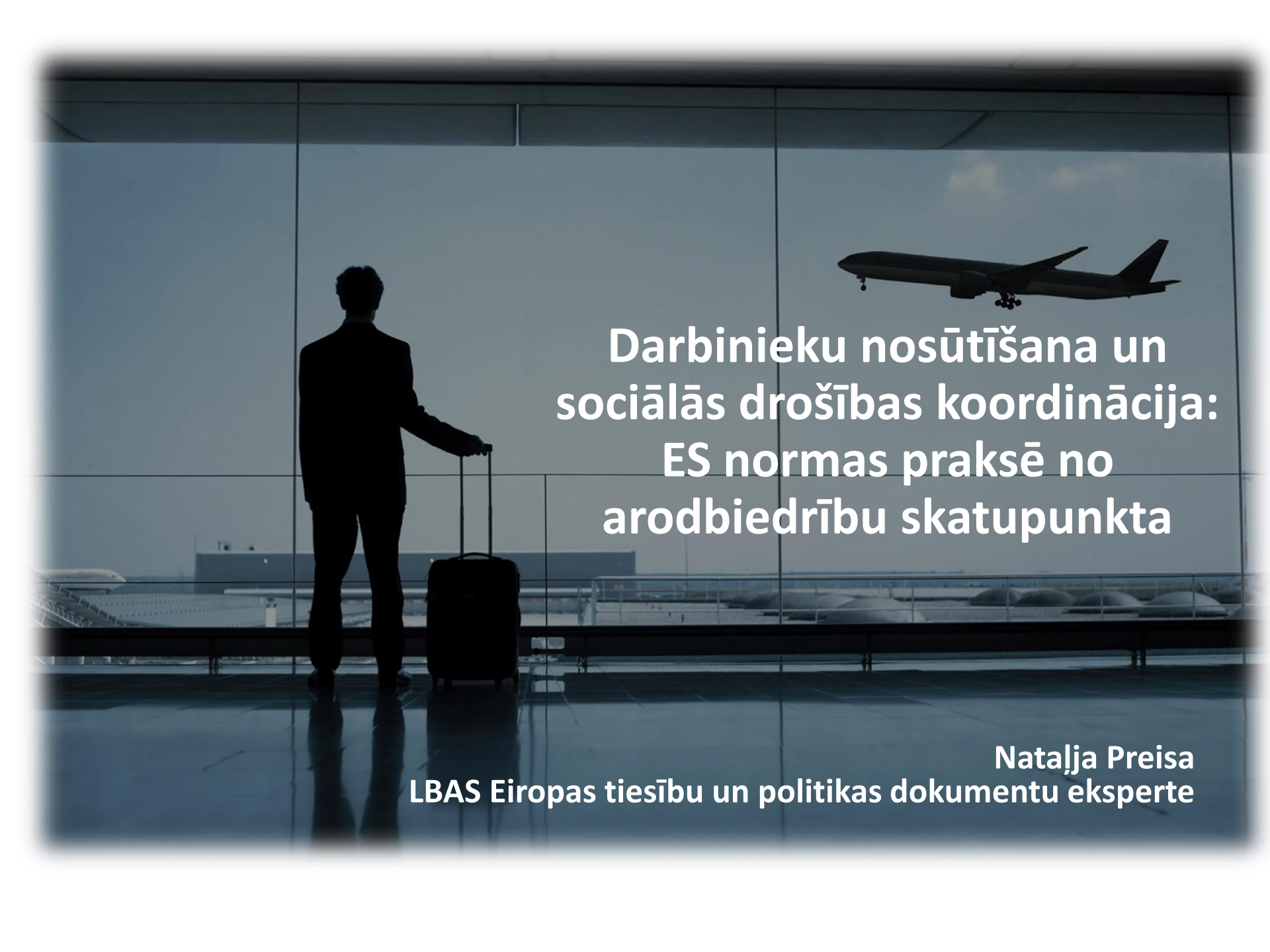
- Minimālās darba algas elementi:
  - Tikai pamatalga
  - Ne papildus maksājumi (piemēram, par virsstundām vai iemaksas pensiju fondā)
  - Ne maksājumi, kuri atlīdzina ar norīkojumu saistītos faktiskos izdevumus (C-341/02, C-522/12)
- Komandējuma nauda kā minimālās darba algas elements – ja uzņemošā valsts definējusi minimālo darba algu nosūtīšanas nozīmē un kompensācija par atrašanos prom no mājām ir iekļauta šajā apmērā (C-396/13)

# Informācijas par “minimālo darba algu” pieejamība

- Informācijai jābūt pieejamai un precīzai, nevis nepieejamai vai pārāk grūti uzzināmai
- Ja informācija nav pieejama, tad uzņēmošajai DV nav tiesības piemērot sodus (C-369/96, C-376/96, C-396/13)
- Direktīvas 2014/67/ES 5.pants - jābūt vienotai informācijas vietnei

# Komandējums un nosūtīšana

- Komandējums vai nosūtīšana?

A silhouette of a person in a suit standing in an airport terminal, holding a suitcase. They are looking out a large window at an airplane flying in the sky. The scene is dimly lit, suggesting dusk or dawn.

# Darbinieku nosūtīšana un sociālās drošības koordinācija: ES normas praksē no arodbiedrību skatupunkta

Natalja Preisa  
LBAS Eiropas tiesību un politikas dokumentu eksperte

# Tiesību akti

- Darba likums
- Ministru kabineta noteikumi Nr.969 “Kārtība, kādā atlīdzināmi ar komandējumiem saistītie izdevumi”
- Ministru kabineta ieteikumi Nr. 1 “Ieteikumi vienotas rīcības nodrošināšanai attiecībā uz darbinieku nosūtīšanu”



# Lielākie izaicinājumi



Norīkošanas  
identificēšana

Kontrole un īstenošana

Darba samaksas aprēķins

Pastkastīšu uzņēmumi un  
pagaidu darba aģentūras



# Norīkošanas identificēšana

1. DARBINIEKS stājas darbā pie DARBA DEVĒJA un DARBA DEVĒJS pieņem viņu darbā par **kravas automobiļa vadītāju** (LR Profesiju klasifikators 8332 03).
2. DARBINIEKS uzsāk darbu ar **2016.gada 26.jūlijā**. Pārbaudes laiks – 3 (trīs) mēneši, pārbaudes laikā DARBA DEVĒJAM ir tiesības uzteikt līgumu brīdinot 3 (trīs) dienas iepriekš, nenorādot uzteikuma iemeslu.
3. Darba vieta – darbinieku var nodarbināt dažādās vietās, kā arī atbilstoši normatīvajos aktos noteiktai kārtībai nosūtīts uz citu valsti veikt darba pienākumus.
4. Darba raksturojums: vadīt, remontēt un apkalpot kravas automobiļus, autotransporta līdzekļus ar piekabēm preču, šķidrumu un smago kravu pārvadāšanai jebkurā attālumā.

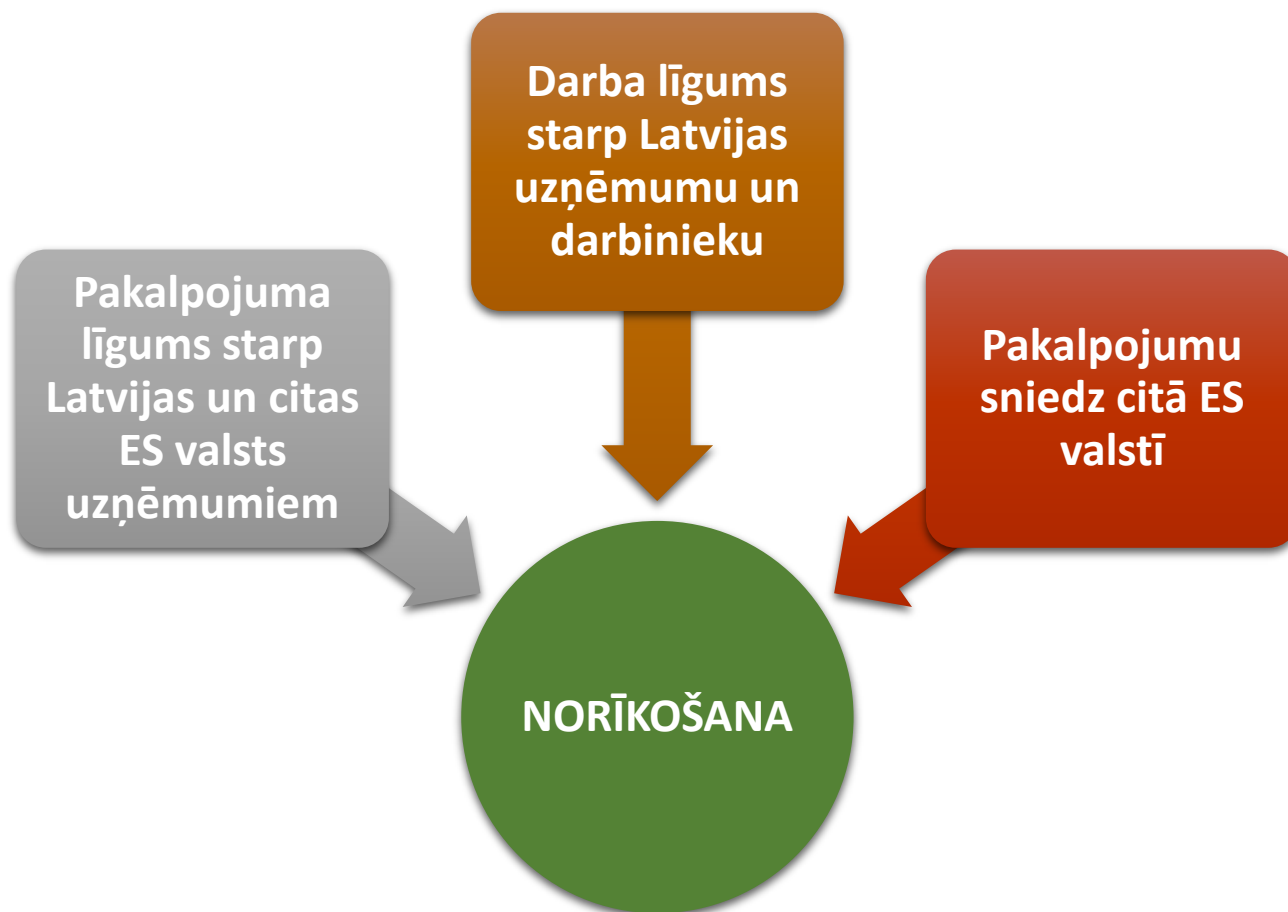
1. Darbinieka pastāvīga darba vieta ir Rīgā.
2. Darbinieku var nodarbināt dažādās vietās Latvijas teritorijā un ārvalstīs. Komandējumi tiek noteikti uz noteiktu laiku ar darba devēja rakstisku rīkojumu.
3. Darbinieks piekrīt, ka darba pienākumu pildīšana ir saistīta ar ilgstošiem komandējumiem Latvijas Republikas teritorijā un citās valstīs.
4. Darbiniekam tiek noteikta darba samaksa par darbu Latvijā 5,50 EUR stundā pēc nodokļu nomaksas, savukārt par darbu ārvalstīs – 8,00 EUR stundā pēc nodokļu nomaksas.

# Norīkošanas identificēšana

## DL 14.pants

- 1) darba devējs, pamatojoties uz līgumu, ko viņš noslēdzis ar personu, kuras labā tiks veikts darbs, nosūta darbinieku uz citu valsti;
- 2) darba devējs nosūta darbinieku uz citā valstī esošu filiāli vai koncernā ietilpstošu uzņēmumu;
- 3) darbaspēka nodrošināšanas pakalpojuma sniedzējs kā darba devējs nosūta darbinieku darbaspēka nodrošināšanas pakalpojuma saņēmējam, kura labā un vadībā tiks veikts darbs, ja tā uzņēmums atrodas citā valstī vai arī tas veic savu darbību citā valstī.

# Norīkošanas identificēšana



# Norīkošanas identificēšana: Pakalpojums

*“pakalpojums” ir jebkāda pašnodarbināta saimnieciskā darbība, parasti par atlīdzību, kā minēts Līguma 50. pantā;*

Pakalpojumu direktīva (2006/123/EK) 4.panta 1)

*EKL 50. pantā ir precizēts, ka pakalpojumus uzskata par “pakalpojumiem” Līguma nozīmē, ja tos parasti sniedz par atlīdzību. Tiesa jau ir nospriedusi, ka šīs normas nozīmē atlīdzības galvenā pazīme ir tāda, ka tā ir ekonomiski izteikts pienākums, kas otram pusei izriet no attiecīgā pakalpojuma.*

Lieta C-422/01 *Ola Ramstedt pret Riksskatteverket* (§23)

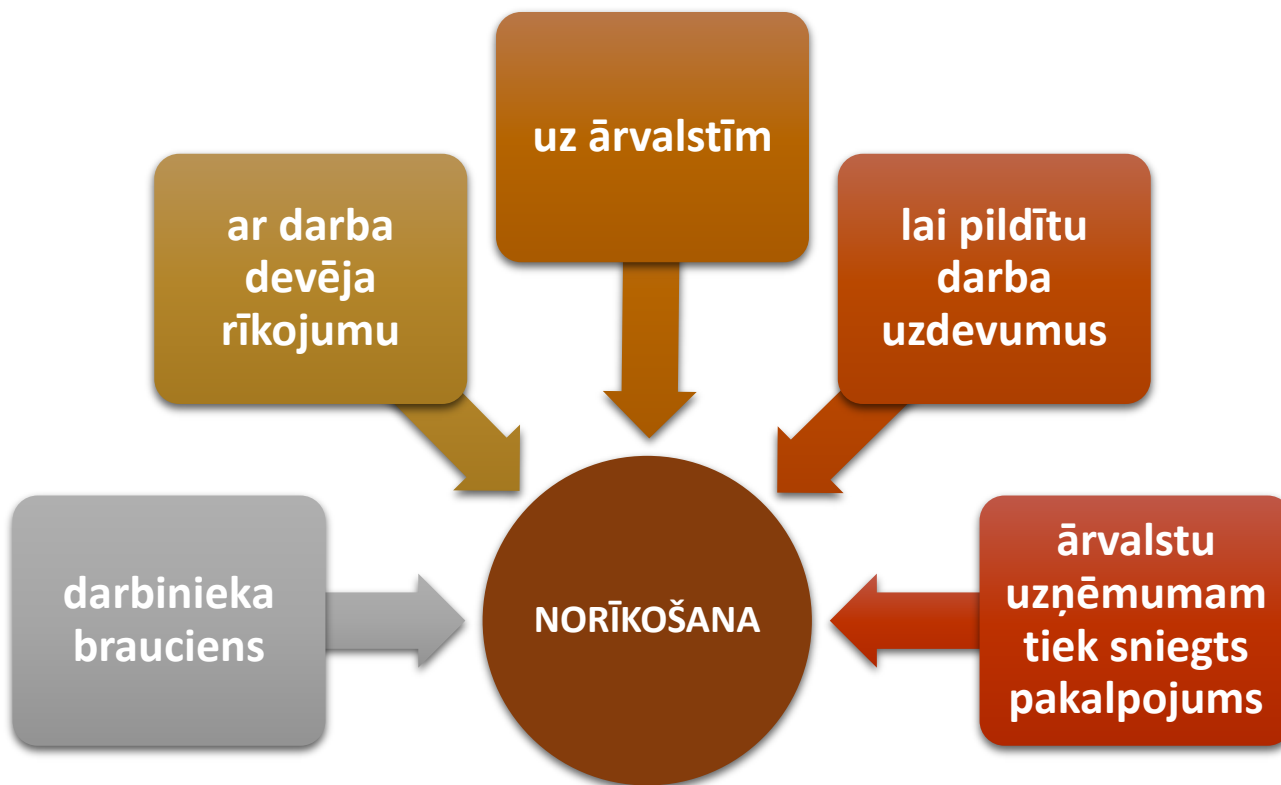
# Norīkošanas identificēšana: norīkošana vai komandējums?

2. ar komersanta vadītāja rakstisku rīkojumu apstiprināts darbinieka brauciens uz noteiktu laiku uz citu apdzīvotu vietu Latvijas Republikā vai uz ārvalstīm, lai:

2.1. **pildītu darba vai dienesta uzdevumus**

2.2. papildinātu zināšanas un paaugstinātu kvalifikāciju.

# Norīkošanas identificēšana: norīkošana vai komandējums?



# Norīkošanas identificēšana

SKC-2425/2014:

«darbinieka nosūtīšana ir komandējuma paveids: tas pilnībā atbilst komandējuma jēdzienam, vienīgi ir šaurāks»



# Darba samaksas aprēķins



Minimālās  
algas likmes



Komandējuma  
izdevumi





Darbiniekam par komandējuma laiku atlīdzina šādus izdevumus:



dienas nauda, lai kompensētu papildu izdevumus, kas rodas komandējuma laikā



ceļa (transporta) izdevumi



viesnīca (naktsmītne), ieskaitot brokastis



bagāžas pārvadāšana



izbraukšanas dokumentu noformēšana



apdrošināšanas polise



sabiedriskais transports



komisijas maksa bankai



autostāvvietā un iebraukšana teritorijās, maksas ceļu un tiltu lietošana

# Darba samaksas aprēķins



SKC-952/2015:

dienas nauda nav vienīgais instruments darbinieka izdevumu kompensēšanai, taču Tiesai jāvērtē, vai darba līguma noteiktā darba samaksas likme atbilst uzņemošas valsts minimālajai darba algai un vai tā sedz papildu izdevumus, kuri darbiniekam radušies norīkošanas darbā rezultātā

# Darba samaksas aprēķins

## DL 14.<sup>2</sup>pants

Komandējuma dienas naudu, kas saistīta ar attiecīgo nosūtījumu, uzskata par minimālās darba algas daļu, ja to paredz tās valsts noteikumi, uz kuru darbinieks ir nosūtīts veikt darbu.

Cita atlīdzība, kas saistīta ar faktisko izdevumu segšanu, netiek uzskatīta par minimālās darba algas likmes daļu.

# Minimālās algas likmes

## Kur meklēt informāciju?

Posted workers

What is posting?

Rights and rules for posted workers

National figures and legislation on posting of workers

Posting of Workers and Enforcement Directive

Revision of the Posting of Workers Directive

Are you a posted worker?

Legal background

Studies

This topic in detail

Related news

Related documents

Related links

More on this topic

- De Wispelaere, Pacolet (2016) - [The Economic Value of Posting of Workers](#)
- Study on wage setting systems and minimum rates of pay applicable to posted workers (2015) - [Final report / Annexes](#)
- [Older studies](#)

## This topic in detail

[Single national websites on posting and contacts](#)

[National liaison offices and authorities](#)

## Related news



22/10/2018

**Celebrating EU labour mobility: 60 years of social security coordination and 50 years of free movement for workers**



17/05/2018

**Social Agenda 51 - Fair mobility and social fairness**

<http://ec.europa.eu/social/main.jsp?catId=471&langId=en>

# Minimālās algas likmes

## ON THIS PAGE

### Working conditions

### National websites on posting

### Other rights

#### Income tax

#### Social security cover while abroad

### Advance declaration

Your employer may also pay your costs for travel, boarding and lodging in the EU country where you are posted if this is foreseen in your home country's legislation. These allowances will have to be paid on top of your normal wage.

## National websites on posting

Check the national website of your host country to find out the terms and conditions of work for posted workers, as well as contact information of the local authorities.

**Choose country:**

Austria <input type="button" value="en"/>	Hungary <input type="button" value="en"/>	Netherlands <input type="button" value="en"/>
Belgium <input type="button" value="en"/>	Germany <input type="button" value="en"/>	Poland <input type="button" value="en"/>
Bulgaria <input type="button" value="en"/>	Greece <input type="button" value="en"/>	Portugal <input type="button" value="en"/>
Croatia <input type="button" value="en"/>	Hungary <input type="button" value="en"/>	Romania <input type="button" value="ro"/>
Cyprus <input type="button" value="en"/>	Ireland <input type="button" value="en"/>	Slovakia <input type="button" value="en"/>
Czech Republic <input type="button" value="en"/>	Italy <input type="button" value="en"/>	Slovenia <input type="button" value="en"/>
Denmark <input type="button" value="en"/>	Latvia <input type="button" value="en"/>	Spain <input type="button" value="en"/>
Estonia <input type="button" value="en"/>	Lithuania <input type="button" value="en"/>	Sweden <input type="button" value="en"/>
Finland <input type="button" value="en"/>	Malta <input type="button" value="en"/>	United Kingdom <input type="button" value="en"/>

## Other rights

While posted to another EU country:

- you **won't need a [work permit](#)** - unless you are an employee posted from Croatia to Austria, where restrictions apply to work in certain sectors
- you **won't need to have your professional qualifications recognised**, however, you may need to make a **written declaration** for some professions: find out more on [recognition of professional qualifications](#)

[https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index\\_en.htm](https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm)

# Kur meklēt informāciju?

[www.lca.lv](http://www.lca.lv)

LCA raksti - Mozilla Firefox

https://lca.lv

Sign in to your account Gmail ETUC Google Maps Google tulkotājs Latvijas Republikas Mi... Latvijas Republikas Sa... http://titania.seima...

Lai pini lūdzam LCA oficiālajā lapā

meklēt...

Par sakārtotu darba tirgu un profesionālo izaugsmi

LATVIJAS CELTNIĒKU ARODBIEDRĪBA

NAVIGĀCIJA

- Aktualitātes
- Par LCA
- Statūti
- Kontakti
- Pieteikties arodbiedrībai
- Projekti
- Jaunieši LCA
- Konsultācija

LESĀKĀM

MŪSTRĀDĒKŅI ALGAS UN TIESĪBAS ESI DROŠI

ESI DROŠI!

LCA raksti

Ģenerālvienošānās

Trešdiena, 16 augusts 2017 10:24

NACIONĀLAIS ATTĪSTĪBAS PLĀNS 2020

EIROPAS SAVIENĪBA Eiropas Sociālais fonds

IEGULDĪJUMS TAVĀ NĀKOTNĒ

Eiropas Sociālā fonda projekts "Latvijas Brīvo arodbiedrību savienības divpusējā sociālā dialoga attīstība labāka tiesiskā regulējuma izstrādē uzņēmējdarbības vides sakārtošanai" Nr.3.4.2./161/002

Pasītoļoties uz Ministru kabineta (turpmāk – MK) 2016.gada 6.septembra noteikumiem Nr.690 "Darbības programmas "Izaugsme un nodarbinātība" 3.4.2.specifiskā atbalsta mērķa "Valsts pārvaldes profesionālā pilnveide un sociālā dialoga attīstība labāka tiesiskā regulējuma izstrādē uzņēmējdarbības atbalsta jomā" un Līgumu Nr.3.4.2.2/161/002 pasākuma "Eiropas Savienības fonda projekta īstenošanu, Latvijas Brīvo arodbiedrību savienība (turpmāk – LBAS) 2017.gada 26.maijā ir uzsākusi projekta "Latvijas Brīvo arodbiedrību savienības divpusējā sociālā dialoga attīstība labāka tiesiskā regulējuma izstrādē uzņēmējdarbības vides sakārtošanai" īstenošanu.

Projekta mērķis ir nodrošināt divpusējā nozaru sociālā dialoga attīstību labāka tiesiskā regulējuma izstrādē uzņēmējdarbības vides sakārtošanas veicināšanai prioritāri piecās nozarēs – kokrūpniecībā, ķīmiskajā rūpniecībā un tās saskarozarēs, būvniecībā, transportā un loģistikā, telekomunikācijās un sakaros.

Lasīt tālāk...

Māja kokā

Otdiena, 06 jūnijs 2017 10:58

Mūsu partneri

- LATVIJAS BRĪVO ARODBIEDRĪBU SAVIENĪBA
- Fellesforbundet Styrke og troverdighet
- LBAS LATVIJAS BUVNIEKU ASOCIĀCIJA
- VALSTS DARBA INSPEKCIJA
- VALSTS PĀRVALDES IZPILDĪBAJĀ
- Valsts sociālās apdrošināšanas aģentūra

Kur meklēt informāciju?

<https://www.constructionworkers.eu/lv/pl>

The screenshot shows the website 'Construction workers - Mozilla Firefox' in a browser window. The address bar displays 'https://www.constructionworkers.eu/lv/pl'. The page features a dark grey header with a search bar and navigation icons. Below the header, a blue banner contains the text 'BŪVSTRĀDNIKI ALGAS UN TIESĪBAS EIROPĀ' (Construction Workers Wages and Rights in Europe) and a language selection dropdown set to 'LATVIEŠU VALODA'. A green button prompts users to 'PIEKRĪTIET SĪKFAILU POLITIKAI UN AIZVERIET ŠO PAZIŅOJUMU'. The main content area is divided into a left sidebar and a main section. The sidebar includes a 'SĀKUMS' (Home) button, a list of '28 VALSTIS' (28 Countries), and links to 'SAZINIETIES AR ARODBIEDRĪBU' (Contact the Union) and 'PIEVĒNIJĒTIETIES ARODBIEDRĪBAI' (Join the Union). The main section is titled 'PĀRBAUDĪT ALGAS UN DARBA APSTĀKLĀS' (Check Wages and Working Conditions) and features a map of Europe with a red box highlighting 'POLIJA' (Poland). A 3D illustration of a construction worker holding a sign with the website's title is positioned at the bottom left of the main section.

# Kontrole un ieviešana



Ātra gadījumu izmeklēšana un pierādījumu savākšana: IMI sistēma?



«Ķēdes norīkošana vai tālāk norīkošana»: darba devēja identificēšana



Trešo valstu pilsoņu nodarbinātības vai norīkošanas identificēšana: robežsardzes, PMLP un VDI sadarbība



Pastkastīšu uzņēmumu darbības ierobežošana: uzņēmumu ekonomiskās darbības vērtēšana



Ienākošo norīkoto darbinieku uzskaitē: elektroniska datu bāze



# Kontrole un ieviešana: darba devēja pienākumi

## Informēt VDI

- Norīkotie darbinieki
- Darba vieta Latvijā
- Norīkošanas ilgums
- pakalpojuma saņēmējs
- Apliecinājums par darba attiecībām
- Darba devēja pārstāvji

## Noteikt pārstāvjus

- Pārstāvis valsts iestādēs un tiesā
- Pārstāvis koplīguma pārrunām

## Glabāt dokumentus

- Darba līgumi
- Darba samaksas aprēķins
- Darba laika uzskaite
- Darba samaksas izmaksas apliecinājums

# LBAS pieredze: starptautiskā sadarbība



- Sadarbības vienošanās LBAS-LO Sweden (2014)
- Sadarbības vienošanās starp Latvijas Būvniecības nozares arodbiedrību un Fellesforbundet



European Federation  
of Building  
and Woodworkers



CONFEDERATION  
**SYNDICAT  
EUROPÉEN  
TRADE UNION**

  
**UNION  
MIGRANTNET**

# Secinājumi

- Valsts pārvaldes institūciju institucionālā sadarbība
- Uzņēmumu ekonomiskās darbības vērtēšanas kārtība
- Vadlīniju precizēšana, skaidrošana
- Apmācības
- Darba inspekciju starptautiskā sadarbība
- Eiropas Darba iestāde
- Direktīvas 2018/957 ieviešana

**Paldies!**



# Posting of Workers

October 2018

*Carita RAMMUS*  
*DG Employment, Social Affairs and Inclusion*  
*Unit EMPL/D1*  
*Free Movement of Workers, EURES*

# EU Legal framework

- **Directive 96/71/EC (the Posting of Workers Directive)**
- **Directive 2014/67/EU (the Enforcement Directive on Posting)**
- **Directive 2018/957/EU (revision of the PWD)**

# Directive 96/71

Directive 96/71/EC regulates three types of posting of workers (not self-employed):

- the direct provision of services by a company under a service contract
- posting in the context of an establishment or company belonging to the same group ('intra-group posting')
- and posting through hiring out a worker through a temporary work agency established in another Member State



# Summary of main elements Directive 2018/957

- Legal basis
- Types of collective agreements
- Remuneration, and other core-rights
- Long-term posting
- Temporary agency work
- Transparency of information
- Transposition and application
- Link with road transport



# Legal basis

- Internal Market legal basis remains **unchanged**
- However**
- **Article 1: Subject Matter and Scope**
  - **Recalls** that the Directive ensures the **protection of posted workers**
  - and that it shall not affect the **exercise of fundamental rights**

# Types of collective agreements

- Collective agreements declared ***universally applicable***:
  - **CAs observed by all undertakings in the geographical area and profession concerned**
- Member States may also apply ***generally applicable collective agreements***, provided that their application respects ***equal treatment***
  - **CAs generally applicable to all similar undertakings in the geographical area and profession and/or**
  - **CAs concluded by the most representative social partners and which are applied throughout national territory**

# Remuneration

- **Remuneration**
  - Determined by the **host MS** national law and/or practice
  - Means **all the constituent elements of remuneration** rendered mandatory by national law/practice or universally applicable collective agreements

## Core rights

- **Conditions of workers' accommodation**, when provided by the employer in case the worker is away from the regular place of work
- **Allowances or reimbursement of expenditure to cover travel, board and lodging expenses** for workers away from home for professional reasons during the posting assignment

# Long-term posting

- When the **effective duration** of a posting **exceeds 12 months...**
- ...the undertakings apply all the remaining terms and conditions of employment set by law or collective agreement.
- Upon **motivated request** by service provider, the period will **extend to 18 months**

# Temporary agency work

- **Chain postings** – if a TA worker is sent by a user undertaking to carry out work in the territory of another MS, the worker is considered to be posted there by TAW, who is the employer and has to comply with the rules of the posting directives.
- Obligation for user undertakings to **inform TAW of the terms and conditions of employment** it applies

# Transparency of information

- Availability of information on the single official national website regarding:
  - **The constituent elements of remuneration,**
  - **All the terms and conditions of employment**
- Obligation of accuracy and update of information
- Proportionality of sanctions in case of inaccurate info

## Other issues

- Strengthened administrative cooperation – obligation to obtain info also from other authorities
- Posting allowances
- Bogus posting – worker concerned cannot be subjected to less favourable conditions than those applicable to posted workers



# Link with road transport

- **Synchronisation clause** with *lex specialis* currently under negotiation
- **Review clause after 5 years** to assess the need for further measures

# Transposition and application

- Transposition and application after 2 years – **30 July 2020**

## Next steps

- Sub-group to assist MS in the transposition of the Directive
- 8 to 10 meetings, first meeting 3 October
- Participation of social partners as observers at three meetings



**Thank you!**

# Posting of workers and social security entitlements under the EU law

Prof. Dr. Grega Strban

MoveS seminar Latvia, Posting of workers in the context of free movement and coordination of social security, European Union House, Riga 26 October 2018

# Introductory thoughts

- Promotion of movement in the EU
  - Coordination of social security systems
- Modifications in:
  - Patterns of movement
  - Organisation and nature of work
- Posting (secondment) of workers
  - Social security law

# Determining applicable legislation

- One of the basic principles of social security coordination
- Unity of applicable legislation
  - Positive and negative conflicts of law
  - General principle *lex loci laboris /lex loci domicilii*
- This principle
  - is applied exclusively
  - has overriding effect

# Posting

- Exception from *lex loci laboris* rule
- Member States involved
  - Sending MS („the posting State“, „norīkotājvalsts“)
  - Host MS („the State of employment“, „nodarbinātības valsts“)
- Purpose of posting?
- Limitations?



# Posting - limitations

- Work for the employer
  - Also during the time of posting
  - Employer normally carries out its activities in the sending MS?
  - Worker pursues activity on employer's behalf?

# Posting - limitations

- Prior subject to social security legislation
  - Worker shall „continue“ to be subject to the legislation of sending MS
- How long before posting?
- At the same employer?
- What about national rules?
- Proposal of amending the implementing Reg.

# Posting - limitations

- Time limits
  - 24 months
    - No prolongation
    - Host MS has no active role, but has to be informed
  - How to act, if:
    - Foreseen time of posting exceeds 24 months?
    - Work unexpectedly lasts longer than 24 months?
  - Flexibility clause
  - Reducing posting time?

# Posting - limitations

- Prohibition of chain posting
  - Preventing permanent work in the host MS
  - Is replacement of posted worker admissible?
  - Is new posting of the same worker possible?

# Posting – sincere cooperation

- Administrative cooperation
  - Portable document (PD) A1
    - Is it necessary for a worker to have it?
    - A1 constitutive element of posting?
    - National law?
    - Proposal for amending the Regulation
  - Doubts in validity/accuracy of A1?
  - Principle of sincere cooperation of (sending and host) Member States

# Posting – sincere cooperation

- Host MS may require verification
  - Annulment of A1
  - No agreement – Administrative commission...
- Recent CJEU judgments
  - C-620/15 *A-Rosa*, EU:C:2017:309
  - C-359/16 *Altun*, EU:C:2018:63
    - Sincere cooperation implies mutual trust
    - Suspicion of fraud and sending MS does not react
    - The court of law in the host MS may annul PD A1!
  - C-527/16 *Alpenrind*, EU:C:2018:669

# Concluding remarks

- Tense relationship between
  - Coordination of social security systems and
  - Freedom to provide services in the internal market
- Posting is regulated by
  - Labour law
  - Social security law
  - Tax law

# Concluding remarks

- Social security aspect of posting are regulated in
  - National law and Regulation 883/2004
  - Unwanted paradox of a Regulation?
- Modifications of posting rules are necessary
- If posting rules cannot be applied, work can still be performed in another Member State 😊





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# Darbinieku nosūtīšana un piemērojamie tiesību akti: Latvijas pieredze

Iveta Suraka  
VSAA

**MoveS seminārs Latvijā, Rīga 26.10.2018.**

The coordination:  
bridging the diversity

## Regulas 883/2004 & 987/2009

### II sadaļa

### Piemērojamo tiesību aktu noteikšana

Regulation 883/2004  
Regulation 987/2009

Nevar  
izvēlēties  
valsti, kurā  
veikt valsts  
sociālās  
iemaksas

Vienas valsts  
tiesību aktu  
piemērošana

European level





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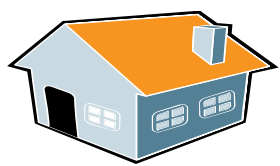
## Problēmjaautājumi/Challenges

- Darba devēji/darbinieki novēloti piesakās A1
- Administratīva un finansiāla rakstura problēmas darba devējiem un darba ņēmējiem, ja iemaksas veiktas nepareizajā DV
- Dažādi nosacījumi DV nacionālajos tiesību aktos, tai skaitā formalitātes par nosūtīto darbinieku paziņošanu, administratīvās prasības un kontroles pasākumi

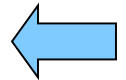


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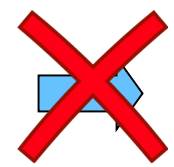
# Situācijas "iz" dzīves/Real-life situations



**VSAA**



**10 gadus/ for 10 years**



**SODRA**

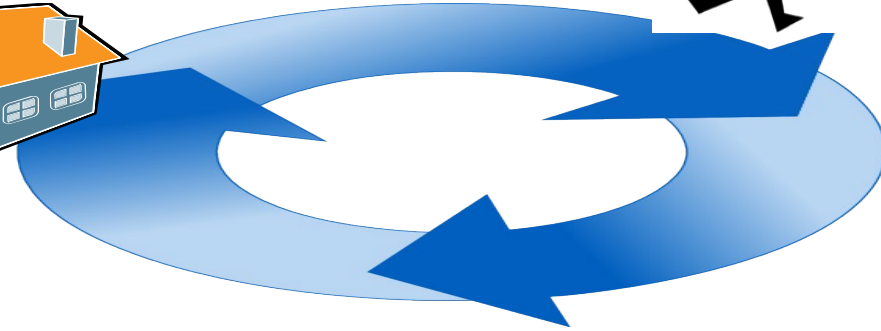
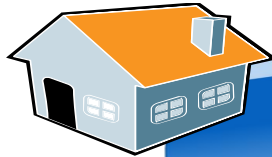


**13.1.(a) pants**



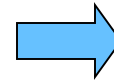
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# Situācijas "iz" dzīves/Real-life situations



Skatteverket

7 gadus/ for 7 years



VSAA

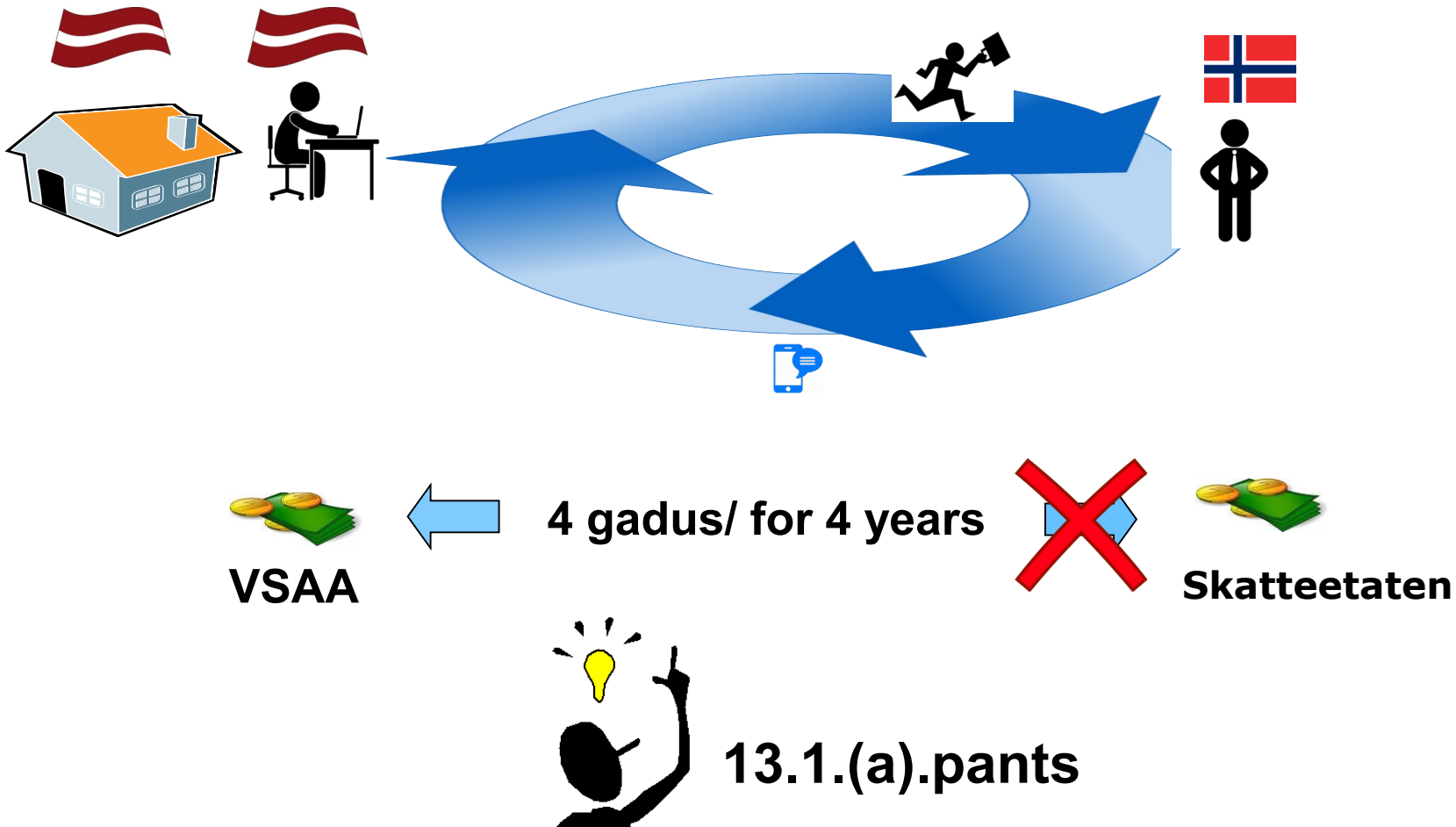


13.3.pants



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# Situācijas "iz" dzīves/Real-life situations





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## Regulas piemērojamas jau 14 gadus

Likuma «Par valsts sociālo apdrošināšanu»  
grozījumi no 25.10.2016. par obligāto  
iemaksu nodošanu un pārvešanu starp  
dalībvalstīm



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# Administratīvā sadarbība (ES līmenī)

**DV kompetentās iestādes**

**IMI sistēma**

**Tiešie kontakti**

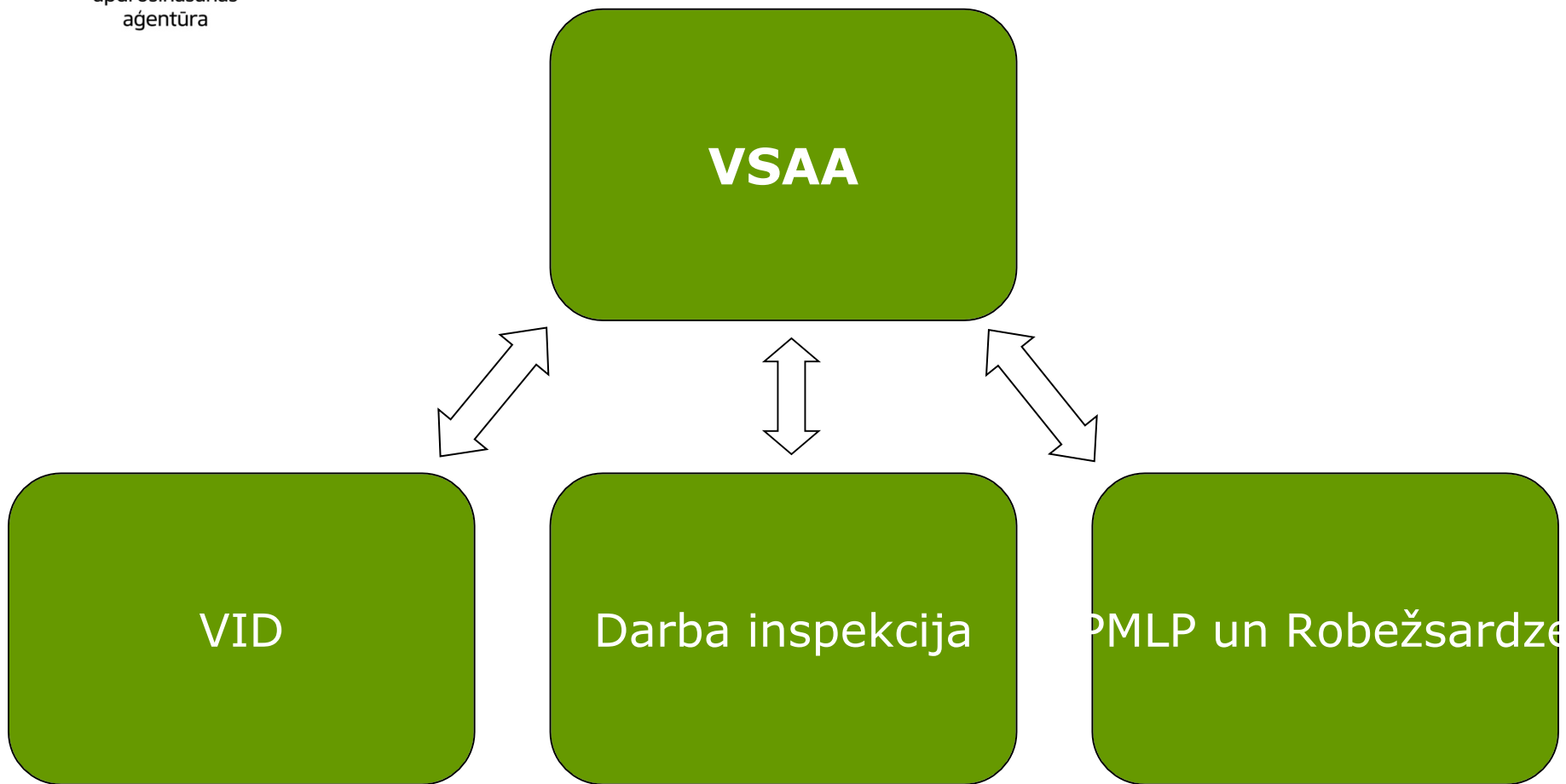






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# Administratīvā sadarbība (nacionālā līmenī)



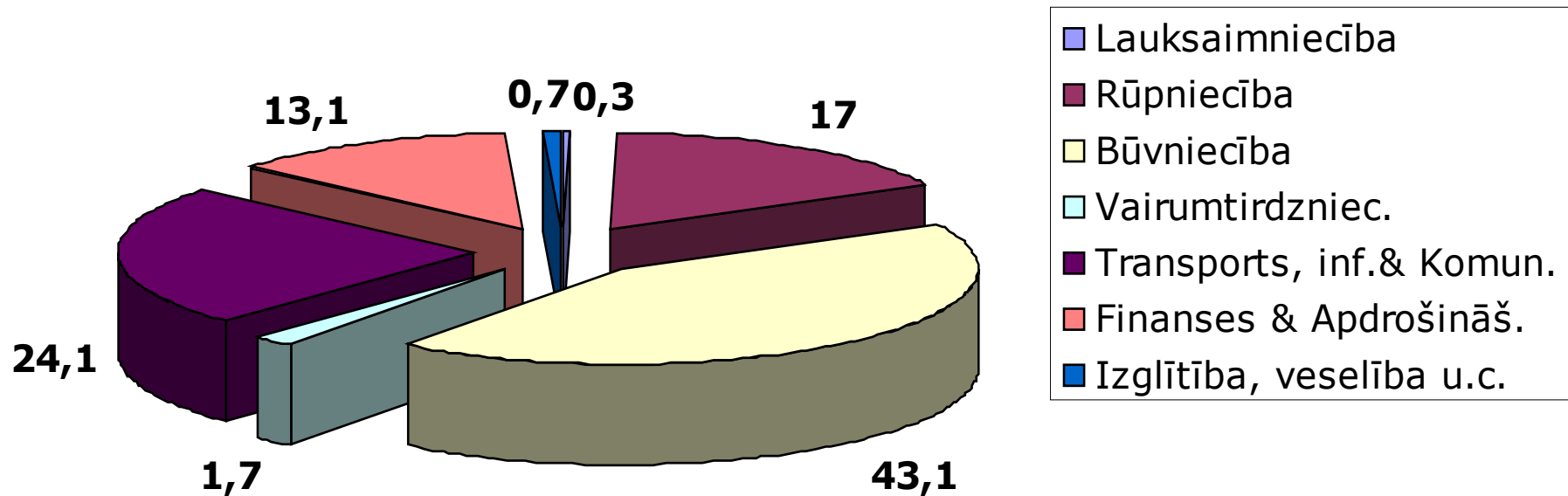


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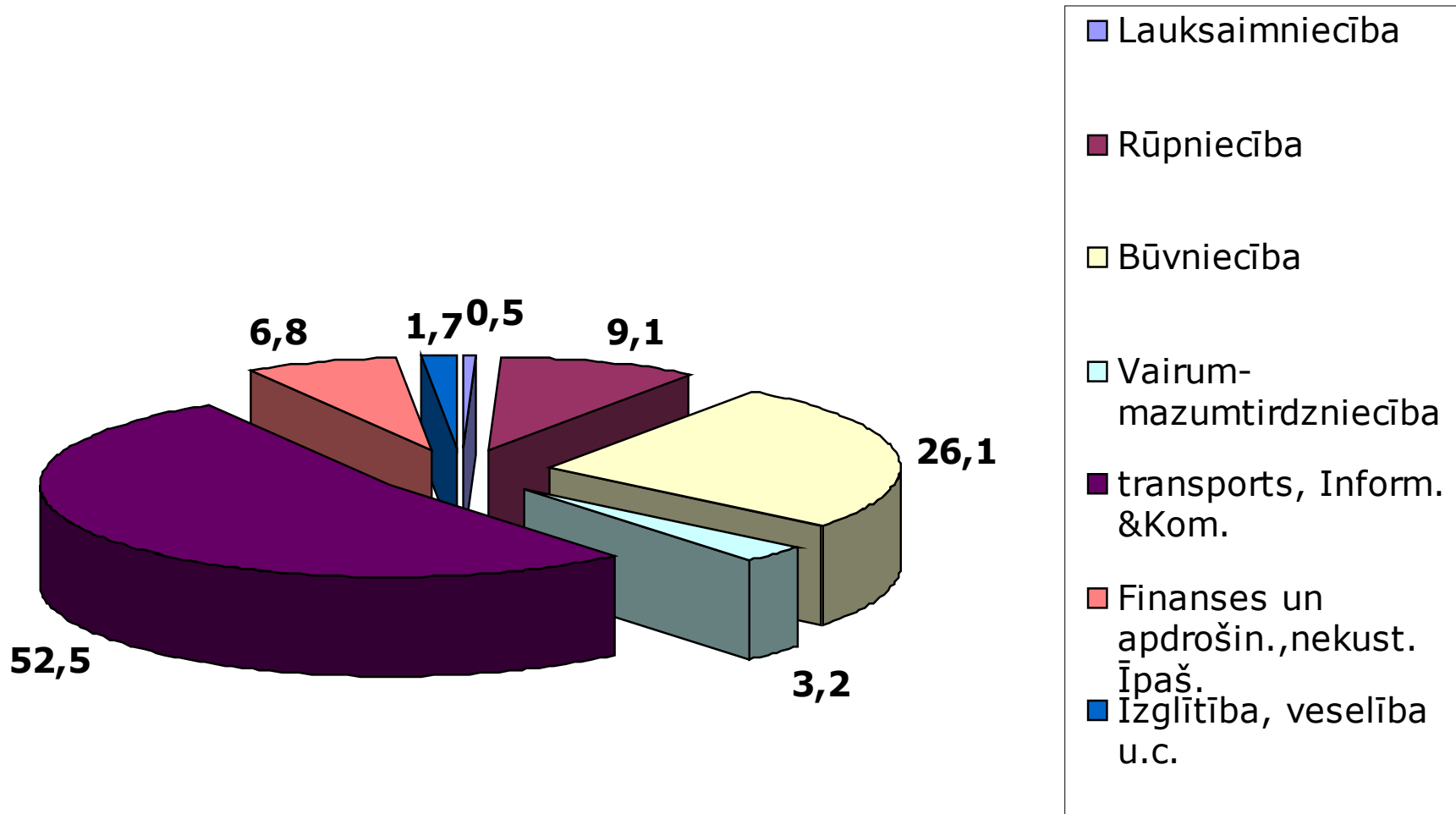
# A1 statistika 2017.

Kategorijas	izdotie A1
Nosūtītie darbinieki (12.pants)	1529
Nodarbināti divās vai vairāk DV (13.pants)	16978
Jūrnieki	768
Pašnodarbinātas personas	235
Citi	1179
KOPĀ	<b>20689</b>

# Izdotie A1 (12.pants)/PDA1 (Article 12)



# Izdotie A1 (13.pants)/PDA1 (Article 13)





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# Krāpniecība (Fraud) 2017

- LV uzņēmums viltoja A1 sertifikātus 6 personām  
Latvijas valsts policija izmeklē šo lietu
- LV uzņēmums, kurš nosūtīja darbiniekus uz Beļģiju, neveica nozīmīgu saimniecisko darbību Latvijā  
A1 sertifikāti anulēti



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# Kļūdas (Errors)

- Piemērojamo tiesību aktu noteikšana par atpakaļejošu periodu
- Iemaksas vienlaicīgi ir veiktas divās dalībvalstīs



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## EST prakse/ECJ

### **Lieta C-437/18**

*Lebopoll logistics pret Zakład Ubezpieczeń  
Społecznych Oddział w Zabrze*

Trešās valsts pilsoņu nodarbinātība. Regulas  
1231/2010 termina "dzīvesvieta" interpretācija.  
Vai arī "uzturēšanās (pagaidu dzīvesvieta)"?



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# Lieta C-477/17

*Raad van bestuur van de Sociale Verzekeringsbank  
**pret***

*D. Balandin, I. Lukashenko, Holiday on Ice Services BV*

**Ģenerālvokāta Nilsa Vāla [Nils Wahl] secinājumi,  
27.09.2018.**(pagaidu versija)

“Regulas 1231/2010, ar ko Regulas Nr. 883/2004 un Nr. 987/2009 attiecinā arī uz tiem trešo valstu valstspiederīgajiem, uz kuriem minētās regulas neattiecas tikai viņu valstspiederības dēļ, 1. pants ir jāinterpretē tādējādi, ka darba ņēmēji, trešās valsts valstspiederīgie, kuri uz laiku strādā pie Nīderlandē reģistrēta darba devēja dažādās dalībvalstīs, bet kuriem nav saskaņā ar Savienības vai valsts tiesību aktiem izdotas uzturēšanās atļaujas, nevar atsaukties uz Regulu Nr. 883/2004 un Regulu Nr. 987/2009”





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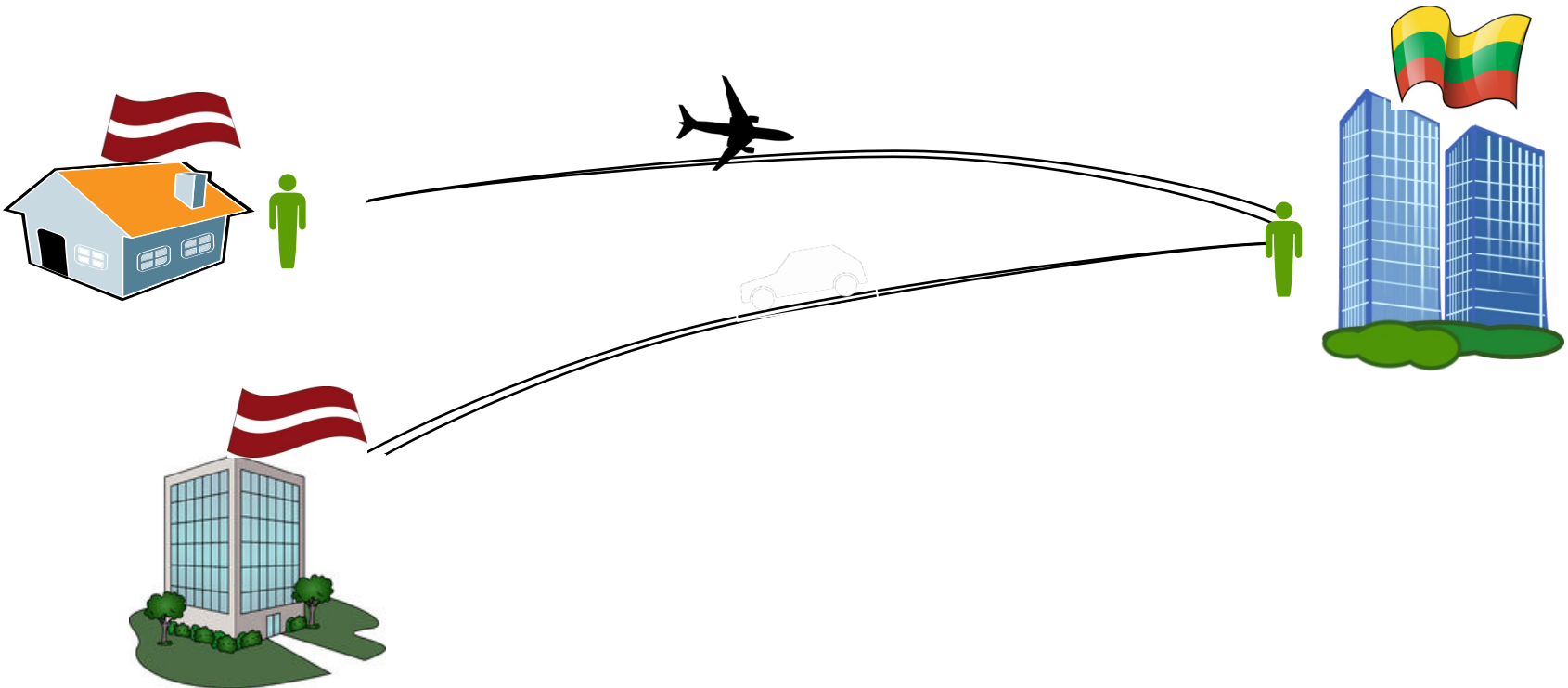
# Nākotnes izaicinājumi/What the future holds?

- Priekšlikumi Regulu 883/2004 un 987/2009 grozījumiem.  
Jauni nosacījumi par piemērojamiem tiesību aktiem nodarbinātajiem vairākās valstīs
- *Brexit*  
A1 ar darbības termiņu līdz 2019.gada 29.martam  
Tiesības uz pakalpojumiem, informācijas apmaiņa...



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# Veiksmes stāsts / Success story





**PALDIES PAR UZMANĪBU!**

*ALL SIGNS POINT TO CHANGES*