

MoveS seminar Malta

*The Determination of Applicable Legislation and
Posting of Workers – The Maltese Perspective*

St Paul's Bay, 6 November 2019

Dolmen Hotel, Qawra, St Paul's Bay 2402, Malta
Language: English

MoveS

project presentation



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)



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**

MoveS Legal Reports (2019):

- ***'Report on the preliminary assessment of the national transposition measures of Directive 2014/50/EU on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights'***
- ***'The application of FMW and SSC by national courts'***
- ***'The Application of the Social Security Coordination rules on modern forms of family/patchwork families'***

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



2019 MoveS seminar calendar

Date	Country
26/4	Lithuania
18/6	Poland
13/9	Finland
23/9	Netherlands
4/10	Spain
10/10	Estonia
25/10	Croatia
5/11	Romania
6/11	Malta
15/11	Sweden



Cooperation and networking

- **MoveS webpage (EUROPA)**

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

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

Determination of Applicable Legislation and Posting of Workers in the EU

What is all about?

Univ-Prof. Dr. *Elias Felten*
Johannes Kepler University Linz

Programme

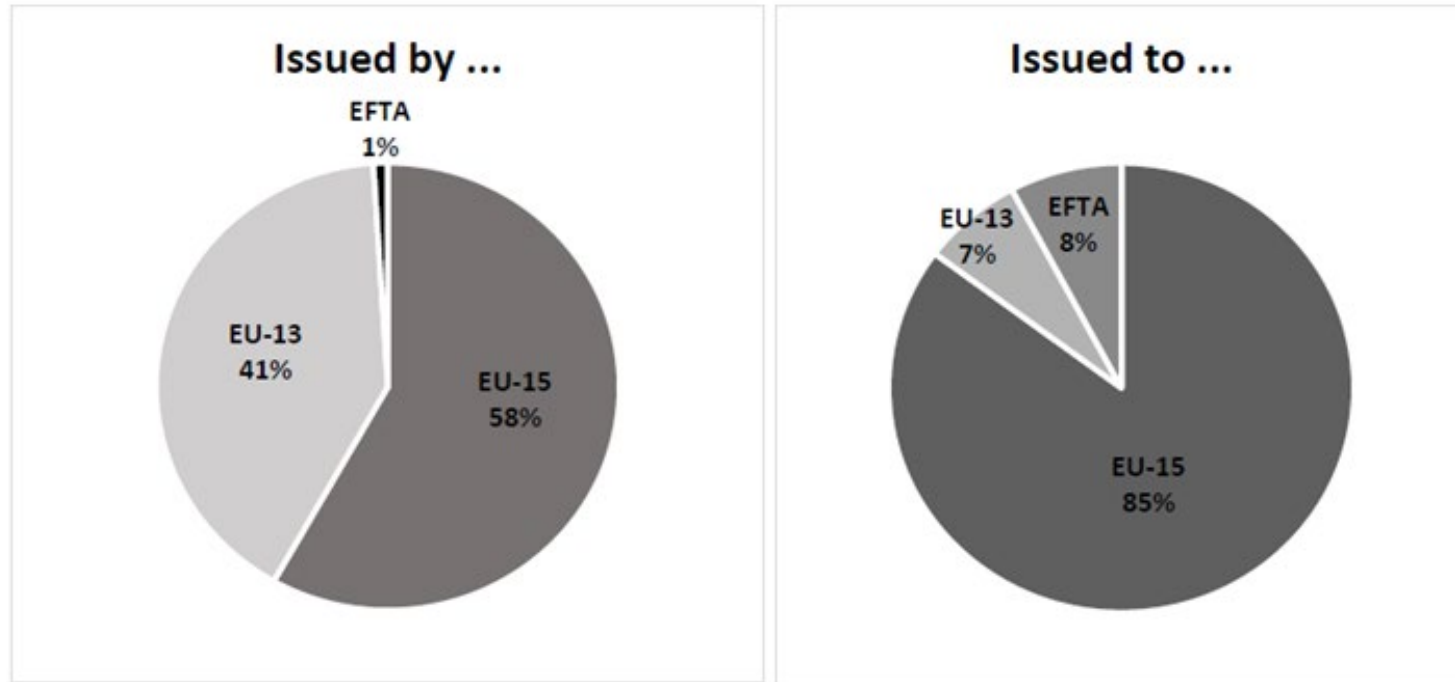
- **Facts and Figures**
- **Legal Background**
 - Freedom of Services
 - Regulation 593/2008
 - Directive 96/71/EG (2014/67/EU, 2018/957/EU)
 - Regulation 883/2004
- **Problems**
 - Notion of „Posting“
 - Applicable legislation
 - Enforcement
- **Outlook**

Facts and Figures

- 2017: total of 2.8 million PDs A1 were issued by MS
 - Compared to 2016, the overall number of PDs A1 issued increased by more than 500.000 certificates = growth rate of 22%
- main issuing MS were Poland (573,358 PDs A1 issued) and Germany (399,745 PDs A1 issued)
- most of the PDs A1 were received by Germany, France and Belgium
- The duration of the posting period is on **average 98 days**
- The total number of individual persons involved amounts to **0.8% of total EU employment**

Source: *De Wispelaere/Pacolet*, Posting of workers - Report on A1 Portable Documents issued in 2017 (2018)

Facts and Figures



Source Administrative data PD A1 Questionnaire 2018

Source: *De Wispelaere/Pacolet*, Posting of workers - Report on A1 Portable Documents issued in 2017 (2018)

Legal Background

- Posting of workers is **expression of freedom of services**
 - temporary movement of workers to another MS to carry out specific services as part of a provision of services of their employer
 - return to home country after completion of work
 - no access to the labour market of the host MS (ECJ C-113/89, *Rush Portuguesa*)
- No obstacles to freedom of services
 - No works permit (ECJ C-113/89, *Rush Portuguesa*)
 - No limitation to EU-citizens (ECJ C-43/93, *Vanderelst*)
 - **applicable legislation**

Legal Background

- **Regulation 593/2008**: Art 8 determines the law applicable to individual labour contracts
 - General rule: the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract
 - Exception: The country where the work is habitually carried out **shall not be deemed to have changed if he is temporarily employed in another country** (“country of origin principle”)
= **posting of workers**

Legal Background

- Application of the „**country of origin principle**“ on posting has direct economic impacts
 - Labour costs (minimum wages, etc)
 - Social security costs
- Problems: unfair competition, negative impacts on the labour market of the host MS
- ECJ: Community law does not preclude MS from extending their legislation, or collective labour agreements to any person **who is employed, even temporarily**, within their territory (ECJ C-113/89, *Rush Portuguesa*)
- Seek for the right balance

Legal Background

Labour Law	Social Security Law
<p>Posting-Directive 96/71/EC Art 3: MS shall ensure that, whatever the law applicable to the employment relationship, undertakings...guarantee posted workers the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:</p> <ul style="list-style-type: none"> - Maximum work and rest periods - Minimum wages ... 	<p>Regulation 883/2004 Art 12: A person who pursues an activity as an employed person in a MS on behalf of an employer which normally carries out its activities there and who is posted to another MS... shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person</p>

Legal Background

- Different approach of EU labour law and social security law to tackle the phenomenon of posting
 - Labour Law:
 - Host MS can apply its terms and conditions of employment from the very first second to posted workers
 - Limited to specific matters and to specific legal sources of labour law (ECJ C-341/05, *Laval*)
 - Posted workers are **subject to the legislation of two MS**
 - Social Security Law:
 - Host MS can apply its social security legislation to posted workers not before the posting duration exceeds 24 months
 - After 24 months the entire social security legislation of the Host MS applies
 - Posted workers/self-employed shall be **subject to the legislation of a single MS only** (Art 11)

Problems: Notion of Posting

- **No common legal notion** of „posting“ in EU law
- As a consequence the material scope of Regulation 593/2008, Posting-Directive 96/71 and Regulation 883/2004 is not consistent
- Direct impacts on applicable legislation
 - MS of origin vs Host MS

Problems: Notion of Posting

- The widest notion of „posting“ is provided by **Regulation 593/2008**
 - Wording of Art 8 does not contain any limitation or specification
 - Rec 36: work carried out in another country should be regarded as temporary if the employee is expected to **resume working in the country of origin after carrying out his tasks abroad**
- No limitations in time, no specific requirements regarding the relationship between employer and employee - “intention to return” is decisive
- Consequence: broad application of the “country of origin principle”

Problems: Notion of Posting

- **Posting-Directive 96/71/EC** applies to undertakings which (cf Art 1/3/)
 - **post workers to the territory of a MS** on their account and under their direction, **under a contract** concluded between the undertaking making the posting and the party for whom the services are intended...provided there is an employment relationship...during the period of posting
 - post workers within the **group**
 - hire out workers to a **user undertaking**
- No limitation in time (cf new Dir 2018/957) - but: „work on account and under direction of the employer“, „stable employment relationship“, „contract“ or „same group“

Problems: Notion of Posting

- Does Art 1/3/a Dir 96/71 cover the provision of on-board service on international trains which also travel through the “host MS”?
- Opinion of the AG Szpunar, C-16/18, *Dobersberger*
 - Workers while crossing Austria, are legally and physically in the territory of that MS but not posted ‘to the territory’ of Austria
 - the situation of ‘**highly mobile workers**’ does not fit the logic of Dir 96/71
 - the entire logic of the country of origin (or posting) and the country of destination does not apply in such a situation, as there is no country of destination (the train returns to the MS of origin)

Problems: Notion of Posting

- Regulation 883/2004 (Art 12)
 - No limitation to workers, but also self-employed
 - Worker must „**pursue an activity as an employed person**“ in the MS of origin
 - Employer must „**normally carry out its activities**“ in the MS of origin
 - No exceedance of an anticipated duration of **24 months**
 - **No replacement** of another posted worker
- Many undefined terms
 - Art 14 Regulation 987/2009
 - Decision A 2 AdminC (legally not binding)
 - Practical guide of the AdminC on the applicable legislation (legally not binding)

Problems: Notion of Posting

- Art 14 Reg 987/2009
 - Art 12 applies to a person who is recruited with a view to being posted to another MS, provided that, **immediately before the start** of his employment, the person concerned is already subject to the legislation of the MS in which his employer is established
 - Decision A 2: at least one month
 - Art 12 applies to an employer that ordinarily performs **substantial activities, other than purely internal management activities**
 - Decision A 2: number of staff, majority of contracts,

....

Problems: Notion of Posting

- ECJ 527/16, *Alpenrind*
 - Art 12 Reg 883/2004 must be **strictly interpreted**
 - the **non-replacement condition** applies in a **cumulative** manner **to the maximum period of 24 month**
 - the recurrent use of posted workers to fill the same post, even though the **employers** responsible for posting workers **are different**, does not comply with the wording or the objectives of Art 12

Problems: Applicable Legislation

- **Nebulous notion** of posting makes determining the applicable legislation difficult
 - Regulation 883/2004:
 - General rule (Art 11): *lex-loci-laboris*
 - MS of employment
 - Special rule: Posting (Art 12)
 - MS of origin
 - Special rule: *„person who normally pursues an activity as an employed person in two or more MS“* (Art 13)
 - MS of residence + substantial part of activity
 - MS of registered office/place of business
 - Exceptions by common agreement of two or more MS (Art 16)

Problems: Enforcement

- **High risk of misuse of posting rules** and little scope for MS to prevent an abuse
 - Social Security Law:
 - **Binding effect of A 1 (E 101) certificates** (ECJ C-527/16, *Alpenrind*)
 - Labour Law:
 - Drift towards **greater protection of workers**
 - Enforcement Directive 2014/67/EU
 - New Directive 2018/957
 - But:
 - rules ensuring such protection cannot affect the right to invoke the **freedom to provide services**
 - **ECJ C-341/05, Laval**
 - ECJ C-64/18, *Maksimovic*

Outlook

- **Modernization and harmonization** of posting rules are necessary
- New Directive 2018/957: first step
 - **Higher protection** of the rights of workers and **more transparency** for undertakings
 - Differentiation between short term and long term posting
- **Proposal for a revision of Reg 883/2004**: Harmonization of the notion of posting – reference to Dir 96/71
- However: too many different interests

Thank you for your interest!

Elias.Felten@jku.at



Recent developments at EU level on social security coordination

**MoveS Seminar
Qawra, Malta
6 November 2019**

**Malcolm SCICLUNA
European Commission
DG Employment, Social Affairs & Inclusion
Unit D2 – Social Security Coordination**

Overview

- 1. Revision of Regulations (EC) No 883/2004 & 987/2009 on the coordination of social security systems**
 - focus on applicable legislation and posting**
- 2. BREXIT contingency measures**
- 3. EESSI (Electronic Exchange of Social Security Information)**

Revision of Regulations on the coordination of social security systems





State of play – formal steps in the legislative procedure

- December 2016: **European Commission** submits its proposal
- June 2018: **Council** adopts its General Approach
- December 2018: **European Parliament** adopts its negotiating mandate
- March 2019: Provisional agreement achieved between the European Parliament, the Council and the European Commission
- March 2019: Vote in Council - no qualified majority
- October 2019: Legislative process resumed (1st trilogue held on 22 Oct)



Main changes – targeted adjustments to:

- Applicable legislation and posting
- Unemployment benefits
- Family benefits
- Long-term care
- Access to social benefits by inactive mobile citizens
- Miscellaneous amendments (updating of Annexes)

Objectives:

- Continue modernisation of EU social security law
- Facilitate the exercise of citizens' rights
- Ensuring legal clarity
- Fair distribution of financial burden between Member States
- Administrative simplification
- Enforceability of the rules

Applicable legislation & posting

Current rules

Provisional agreement

'Maximum duration' of posting

24 months	24 months
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Period of 'prior affiliation' by the worker to the legislation of the sending Member State before a posting can take place

1 month for employed/ 2 months for self-employed + possible derogations	3 months for both employed/self-employed, without derogations
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Current rules

Provisional agreement

'Period of interruption' between two posting periods for the same person

2 months between two successive postings of any length, only for employed, with possible derogations	2 months for both employed and self-employed persons, if posting lasted 24 months, with possible derogations.
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'Replacement prohibition': a posted worker cannot replace another previously posted worker

Applicable when an employed person is being sent to replace another previously posted employed person	Applicable when an employed person is being sent to replace another previously sent employed/self-employed person
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Current rules

Provisional agreement

Notification by employer/self-employed to sending institution prior to posting taking place, & request for PD A1

An **obligation to notify** '*whenever possible in advance*' – PD A1 issued upon request.

An **obligation to notify** in advance, except in cases of 'business trips'*. No PD A1 is required for business trips.

* **Business trip** defined as

- a temporary working activity of short duration organised at short notice, or
- a temporary activity which does not include the provision of services or the delivery of goods, such as attending business meetings, conferences and seminars, negotiating business deals, exploring business opportunities, or attending and receiving training



Current rules

Provisional agreement

Cooperation between Member States

No legally **binding deadlines** for institutions to reply to requests or to submit evidence on documents issued.

Deadlines set in the Regulations to withdraw/rectify documents when an error is detected, to forward supporting evidence, for responding to general queries.

Rules for persons who normally work in two or more Member States

No **criteria to determine the location of the registered office or place of business.**

Applicable legislation is determined for an undetermined period.

Series of factors included to determine the location of registered office or place of business.

Applicable legislation to be determined for a maximum period of **24 months.**



BREXIT contingency measures in the area of social security



Who is affected?

- 4.5 million EU and UK citizens residing/working in the EU/UK before BREXIT.
- **Scenario 1: DEAL - Withdrawal Agreement**
 - EU law on social security coordination will continue to apply to persons falling within the personal scope of the Withdrawal Agreement.
- **Scenario 2: NO DEAL – Contingency measures**
 - Regulation (EU) 2019/500 establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom from the Union (adopted on 19 March 2019)



Regulation (EU) No 2019/500 establishing contingency measures in the field of social security coordination

Objective:

- To ensure that social security entitlements, linked to the UK, acquired or to be acquired by EU27 or UK nationals before BREXIT are protected.

How are they protected?

- By ensuring that periods of employment, self-employment, insurance or residence, and facts and events which took place before BREXIT will still be taken into account after BREXIT



Personal scope:

- EU-27 and UK nationals who exercised free movement **before** BREXIT
- Their family members and survivors, stateless persons and refugees.

Principles covered:

- Equal treatment, aggregation and assimilation of facts

Matters covered:

- All branches of social security covered by Article 3 of Reg. 883/2004

Entry into application:

- from the day of withdrawal of the UK, in the absence of a withdrawal agreement (no-deal scenario)



EC proposal for a unilateral coordinated approach

- Complements the contingency Regulation
- Recommends Member States to continue applying certain rules related to free movement exercised before BREXIT (e.g. continue to export old-age pensions, finalization of medical treatment ongoing on the withdrawal date, etc.)
- Member States can decide to go further (e.g. by continuing to export to the UK other cash benefits)

Electronic Exchange of Social Security Information (EESSI)



What is EESSI?

- An IT system that helps social security institutions across the EU exchange information more rapidly and securely, as required by the EU rules on social security coordination.

Benefits of EESSI:

- Faster and more efficient message exchanges
- More accurate data exchange between national authorities
- Secure handling of personal data



State of play

- The central EESSI system was delivered by the Commission to the Member States in July 2017.
- The first exchange took place on 10 January 2019, between Austria and Slovenia.
- More than 20 countries have already started live exchanges.
- Two countries are now ready to exchange messages in all Business Cases (Malta and Estonia).
- All 32 countries plan to start the exchanges by January 2020.



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Recent developments at EU level on free movement of workers

Malta, 6 November 2019

Robertas Lukaševičius

Directorate-General for Employment, Social Affairs and Inclusion

Unit D1 – Free movement of workers, EURES



'Free movement of workers'

Free movement (Regulation 492/2011, Directive 2014/54, EURES acquis (Regulation 589/2016 and its implementing acts), portability Directives (1998/49, 2014/50) (supplementary pensions)

but also

posting of workers (Directives 96/71, 2014/67 and 2018/957)

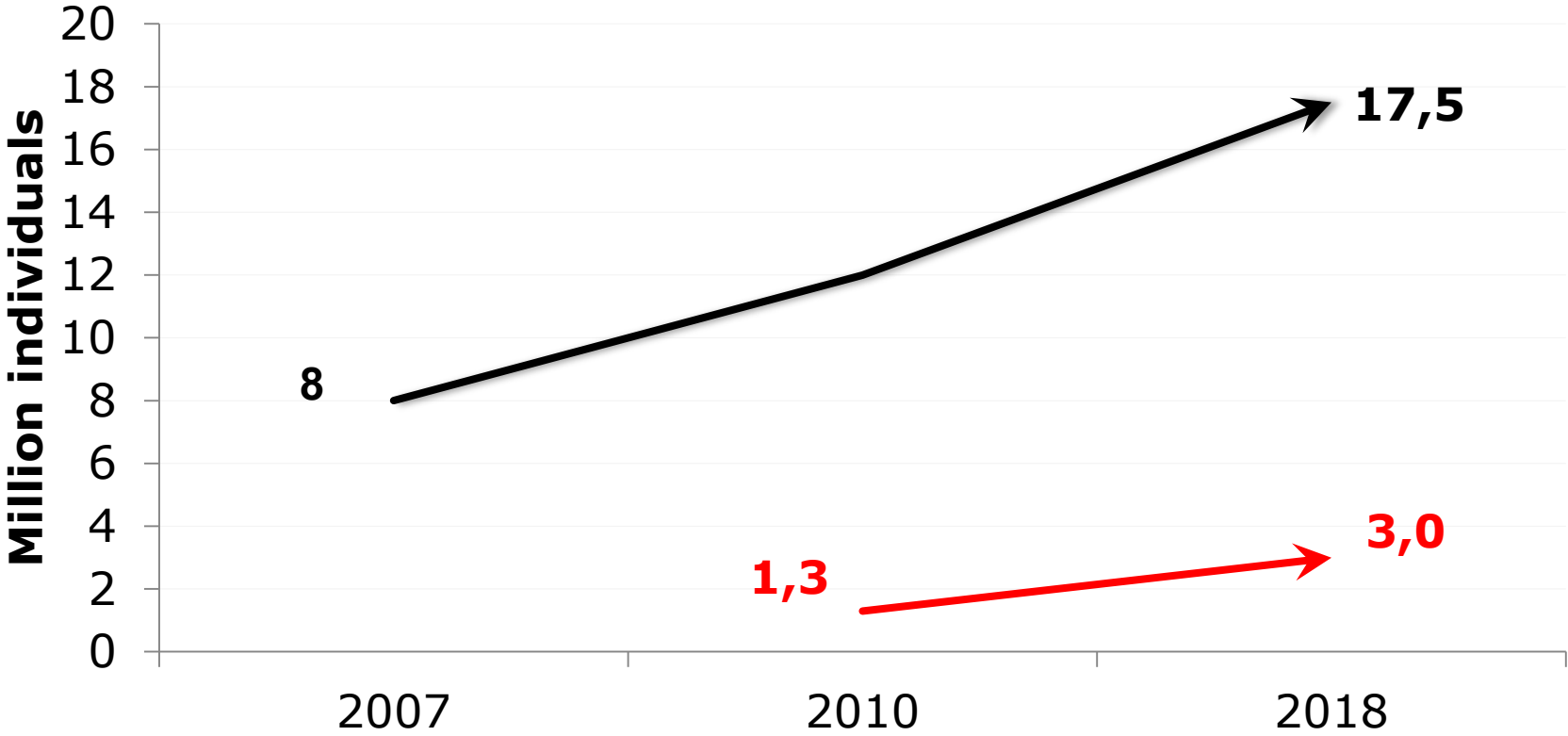
as well as

undecleared work (Decision 2016/344)

not to forget

ELA (Regulation 2019/1149)

Labour mobility in the EU





Enforcement of FM rights

- *Practice shows that it is difficult for EU workers to enforce their rights at national level*
- *Directive 2014/54 **does not create new "substantive" rights for mobile workers**, it 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*
 - National body or bodies must exist to provide assistance to Union workers (including jobseekers) and their family members
 - Improving the defence of rights
 - Promotion of dialogue and better information provision at national level
- *Report on the implementation of Directive 2014/54 ([COM\(2018\) 789 final of 4.12.2018](#))*



Directive 2014/50/EU on supplementary pension rights

- *Aims to further facilitate worker mobility by improving acquisition and preservation of supplementary pension rights. E.g. it provides for the following:*
 - **Waiting + vesting period = max 3 years**
 - **Minimum age for vesting = max 21 years**
 - **Right to retain dormant pension rights in former employer's pension scheme**
 - **Information standards**
- *Implementation report to be published by May 2020*



EURES. Regulation 2016/589

- *EURES (European Employment Services) aims at facilitating and promoting the freedom of movement for workers within the EU notably by exchanging information on employment opportunities*
 - *It is a cooperation network within the EU 28 countries plus Switzerland, Iceland, Liechtenstein and Norway*
 - *European job mobility portal*- 3,5 million job vacancies and 450.000 jobseekers*
- * New release since 6 September 2019*



Key improvements. And challenges

In-depth reform under the Regulation 2016/589-

- **increased transparency:** *exchange of all job vacancies and CVs publicly available with the member organizations allowing for increased possibilities for matching labour demand with labour supply*
- **broadening of the EURES network** to new members and partners beyond public employment services only
- **multilingual online skill-based matching** - better matching possibilities by the European Skills, Competences, Qualifications and Occupation classification (ESCO)



Posting of workers

- *Directive 2018/957 amending Directive 96/71*
 - The same wage for the same work at the same place
 - Transposition deadline 30 July 2020
- *The Enforcement Directive 2014/67*
 - Report from the Commission on the application and implementation of the Directive ([COM\(2019\) 426 final of 25.9.2019](#))
 - [Practical guidance on posting](#) (September 2019)



European Platform tackling undeclared work (Decision (EU) 2016/344)

Objectives

Make national and Union actions more effective

Enhance cooperation between relevant authorities in the MS

Improving the capacity of MS to tackle cross-border aspects

Increasing public awareness

To be integrated into ELA, but - continuation of activities



UDWP Upcoming events

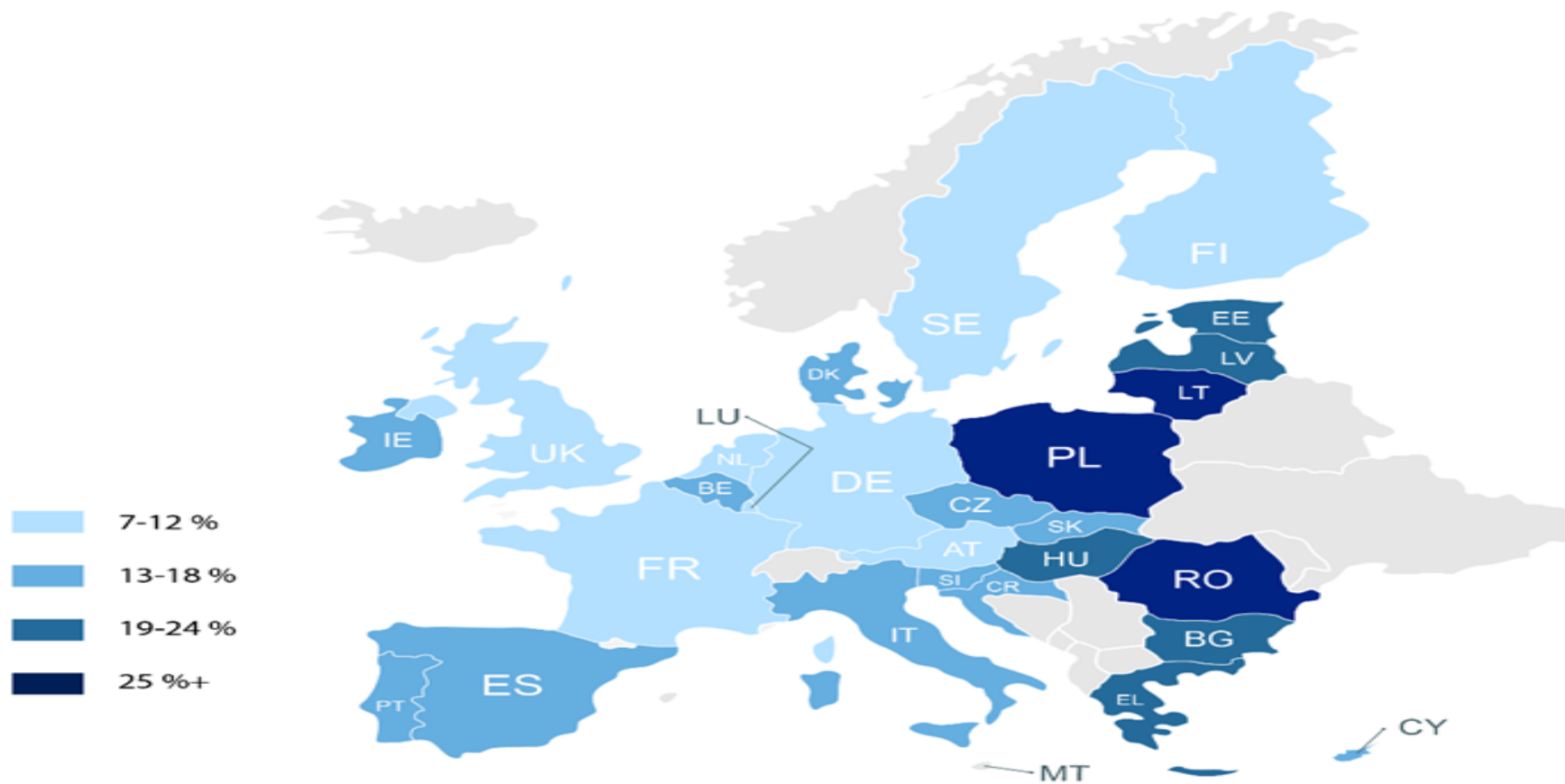
Platform Seminars:

- Training seminar on campaign preparation, 10 December 2019
- Tackling undeclared work in the aviation transport sector, Q1 2020
- Tackling undeclared work in the HORECA sector, Q2 2020

Thematic Review Workshops:

- Approaches to enforce cross-border sanctions in the areas of labour law, tax and social security contributions, Q1 2020
- Tools and approaches to tackle fraudulent agency work prompting UDW, Q2 2020

More information- on the [Platform's webpage](#)



Notes: Estimates for Malta are not provided due to deficiencies of data sources for this Member State

European Labour Authority. Regulation 2019/1149



Easier access to information and labour mobility services for individuals, employers and social partners



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



Mediation in disputes between Member States on the application of EU law concerning labour mobility

Supporting cooperation between Member States in tackling undeclared work

State of play and initial steps

Legal basis

- Adoption of Regulation (EU) 2019/1149 on 20 June 2019
- Publication in the Official Journal on 11 July 2019, entry into force on 31 July 2019

First steps

- ELA Establishment Group
- Interim Executive Director
- Appointment of Management Board members: August 2019
- First Management Board meeting: 16-17 October 2019
- Second Management Board meeting: 3 December 2019

The Authority and other labour mobility bodies and tools

- ***ELA integrates:***
 - European Platform to enhance cooperation in tackling undeclared work
 - Committee of Experts on Posting of Workers
 - Technical Committee on the Free Movement of Workers
 - European Coordination Office of EURES
- ***ELA promotes the use of:***
 - Internal Market Information System (IMI)
 - Electronic Exchange of Social Security Information (EESSI)

Administration and management

Management board, Executive Director and Stakeholder Group

144 people working at the Authority by 2024

Particular role for National Liaison Officers:

- **One from each Member State**
- Contribute to **executing the tasks of the Authority**, including by facilitating cooperation and exchange of information, and the support and coordination of joint inspections
- Act as **national contact points** for questions to or from their Member States
- **Entitled** to request and receive **information from their own Member States**



Valuable MoveS contribution in 2019

- ***Report on the implementation of Directive 2014/50***
- ***Legal Report 'The application of free movement of workers and social security coordination rules by nationals courts'***
- ***Ad hoc requests***



Thank you for your attention!

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The A1 form and its relevance for the Freedom of Movement of Workers

Kristina Koldinská

MoveS visiting expert

Charles university Prague, Faculty of law

Posted worker

- A "**posted worker**" is an employee who is sent by his employer to carry out a service in another EU Member State **on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency.**
- Posted workers are **different from EU mobile workers** in that they remain in the host Member State only temporarily and do not integrate its labour market.

Posted workers rights

- Posted workers in hosting MS entitled to:
 - *minimum* rates of pay;
 - maximum work periods and minimum rest periods;
 - minimum paid annual leave;
 - the conditions of hiring out workers through temporary work agencies;
 - health, safety and hygiene at work;
 - equal treatment between men and women

New posting directive – 2018/957

- application to posted workers of all the mandatory elements of remuneration (instead of the “minimum rates of pay”);
- application to posted workers of the rules of the receiving Member State on workers’ accommodation and allowances or reimbursement of expenses during the posting assignment;
- for long-term postings (longer than 12 or 18 months), application of an extended set of terms and conditions of employment of the receiving Member State;

A1 – official EC definition

- Statement of applicable legislation. Useful to prove that you pay social contributions in another EU country – if you are a posted worker or work in several countries at the same time.



Certificate concerning the Social Security legislation which applies to the holder

EU Regulations 883/2004 and 987/2009 (*)



INFORMATION FOR THE HOLDER

This certificate concerns the social security legislation which applies to you and confirms that you have no obligations to pay contributions in another State.

Before you leave the State where you are insured to go to another State to work, make sure you have the documents which entitle you to receive the necessary benefits in kind (e.g. medical care, treatment in hospital, and other) in the State where you are working.

-If you are staying temporarily in the State where you are working, ask your health care institution for the European Health Insurance Card (EHIC). You must show this card to your health care provider if you need benefits in kind during your stay.

-If you are going to be living in the State where you are working, ask your health care institution for the S1 document and submit it as soon as possible to the competent health care institution of the place you are going to work (**).

Provisionally the insurance institution in the State of stay will also provide special benefits in the event of an accident at work or an occupational disease.

1. PERSONAL DETAILS OF THE HOLDER

1.1 Personal Identification Number	<input type="checkbox"/> Female	<input type="checkbox"/> Male
1.2 Surname		
1.3 Forenames		
1.4 Surname at birth (***)		
1.5 Date of birth	1.6 Nationality	
1.7 Place of birth		
1.8 Address in the State of residence		
1.8.1 Street, N°	1.8.3 Post code	
1.8.2 Town	1.8.4 Country code	
1.9 Address in the State of stay		
1.9.1 Street, N°	1.9.3 Post code	
1.9.2 Town	1.9.4 Country code	

2. MEMBER STATE LEGISLATION WHICH APPLIES

2.1 Member State	2.3 Ending date
2.2 Starting date	
<input type="checkbox"/> 2.4 The certificate applies for the duration of the activity <input type="checkbox"/> 2.5 The determination is provisional <input type="checkbox"/> 2.6 Transitional rules apply as provided for by Regulation (EC) No 883/2004	

(*) Regulations (EC) No 883/2004, Articles 11 through 16 and Regulation (EC) No 987/2009, Article 19.

(**) For Spain, Sweden and Portugal, the certificate must be handed over to, respectively, the head provincial offices of social security National Institute (INSS), the social insurance institution and the social security institution of the place of residence.

(***) Information given to the institution by the holder when this is not known by the institution.

How it looks like?

When A1 form should be asked for?

- Temporary assignment of an employee to an employer established in another Member State;
- Posting on a business trip abroad for the purpose of work;
- *Participation in a foreign conference or training;*
- *Participation in international teambuilding.*

Posting of workers

*Report on A1 Portable Documents
issued in 2016*

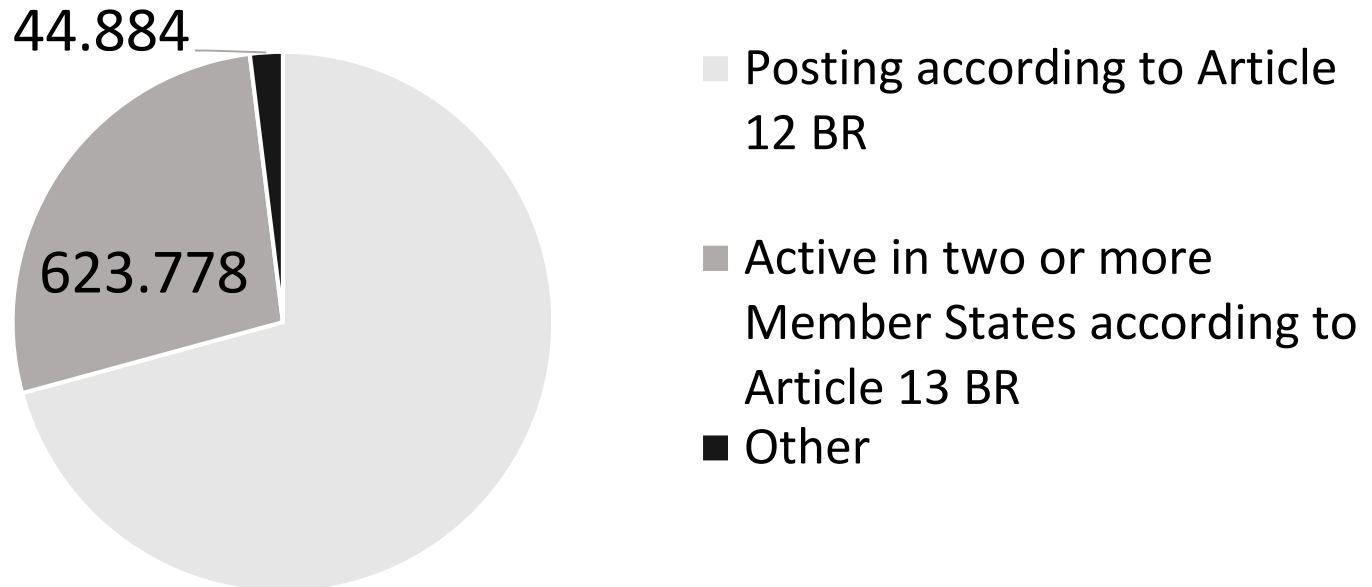
Frederic De Wispelaere & Jozef Pacolet – HIVA-KU Leuven
December 2017



Number of PDs A1 issued, 2016



2.3 million PDs A1 issued



the share of PDs A1 issued to persons active in two or more Member States in the total number of PDs A1 has doubled over the past few years from 13% in 2010 to already 27% in 2016. This illustrates the increasing importance of PDs A1 issued for activities in two or more Member States

Source De Wispelaere and Pacolet, 2018

A1 forms - importance

- A1 forms are becoming very important, at the same time, they are often subject to fraud and error
 - the construction sector under Article 12 of the Basic Regulation and freight transport by road under Article 13 of the Basic Regulation, are in relative terms confronted with a significantly high percentage of incoming or outgoing posted workers or persons active in two or more Member States

A1 related to art. 12 and 13 BR



- A person who in a Member State **pursues an activity as an employed person on behalf of an employer** which normally carries out its activities there and **who is posted** by that employer to another Member State **to perform work on that employer's behalf** shall **continue to be subject to the legislation of the first Member State**, provided that the **anticipated duration of such work does not exceed 24 months** and that he/she is not **sent to replace another posted person**.
- A person who normally pursues an activity as a **self-employed person** in a Member State **who goes to pursue a similar activity in another Member State** shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed 24 months.
- Art. 13 – activity in more MS – substantial part of the activity and residence, or other rules (applicable legislation)

A1 form – legal basis - art. 19(2) IR

- At the request of the person concerned or of the employer, the competent institution of the Member State whose legislation is applicable pursuant to Title II of the basic Regulation shall provide an attestation that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions
- Related to Art. 5 – documents issued by one MS binding for institutions of another MS

Relevance of A1

- Statement of applicable legislation
- Does not create any right nor legal relationship
- Binding? – see case-law and current practice

A1 recent case law

- Is it a regrettable protection for undertakings seeking to circumvent the applicable social security rules, helped by institutions which are too ready to issue the E 101 certificate or
- ultimate expression of the necessary cooperation between Member States in the application of the coordination Regulations?

What if A1 issued in fraudulent cases



- C-620/15 A-Rosa (what about a trip on Rhone?)
 - A-Rosa – DE company, active only in FR, branch in Switzerland, this branch responsible for all legal and logistic issues, employment agreements according to SW legislation, SW E101. FR institutions did not want to accept the E101, asked for FR contributions
 - CJEU: E101 **binding until not abolished**
- C-359/16 – Altun (shall we build a new house?)
 - BE company, working in construction, has no own workers, all construction work enacted through BG contractors, which posted workers to BE. A1 issued – BG legislation applicable. BE inspection - fraud
 - CJEU: **If fraud and error – A1 can be also not accepted** – shift in argumenation
 - binding on both the social security institutions of the Member State in which the activity is carried out and the courts of that Member State, so long as the certificate has not been withdrawn or declared invalid by the Member State in which was issued, even though the competent authorities of the latter Member State and the Member State in which the activity is carried out have brought the matter before the Administrative Commission which held that that certificate was incorrectly issued and should be withdrawn.

CJEU making up its mind in very recent period



- C-356/15 EC vs. Belgium
 - BE took action against social dumping to protect own labour market – nat. Leg.: nat. courts can decide to apply nat. leg. Unilaterally – A1 not valid
 - CJEU: **If fraud and error – national legislation can be applied unilaterally, but....**
 - Issuing institution has to reconsider the grounds for issuing the certificate and, if appropriate, to withdraw the A1 certificate if the competent institution of the Member State in which the workers are posted expresses doubts as to the accuracy of the facts on which the document is based
 - Should the institutions not reach an agreement, in particular, on how the particular facts of a specific case are to be assessed, it is open to them to refer the matter to the Administrative Commission
 - If the Administrative Commission does not succeed in reconciling the points of view of the competent institutions on the question of the legislation applicable in the case at issue, it is at the least open to the Member State in which the workers concerned are posted, to bring infringement proceedings under Article 259 TFEU
 - Thus, even in the case of a manifest error of assessment and even if it were established that the conditions under which the workers concerned carry out their activities clearly do not fall within the material scope of the provision on the basis of which the A1 certificate was issued, the **procedure to be followed in order to resolve any dispute between the institutions of the Member States concerned as regards the validity or the accuracy of an A1 certificate must be complied with**
- C-527/16 – Alpenrind (a really Austrian steak?)
 - Multiple contracts of Alpenrind with HU companies – 250 employees brought to AT, worked there, but A1
 - **A1 binding for nat. institutions and courts until its withdrawal or it's been declared invalid**, also with retroactive effect

Further CJEU case-law development?

- Pending – C-370/17 and C-37/18 Vueling (when flying, always think the cabin crew)
- whether case-law on the binding effect of the E 101 certificate also applies when the court of the host Member State finds that that certificate was obtained or relied on in a fraudulent manner.
- Possibility to precise scope of its judgment in *Altun and Others*, in which it accepted, in principle, that the court of the host Member State is not bound by an E 101 certificate in the event of fraud.
- AG proposed that the Court hold that the court of the host Member State has jurisdiction to disregard an E 101 certificate where it possesses evidence establishing that that certificate was obtained or relied on fraudulently, irrespective of whether the dialogue between competent institutions takes place.
- the effectiveness of the fight against ‘social dumping’ and the trust which the Court generally places in a national court, as a court of the European Union, to ensure compliance with EU law, depend on that solution.

A1 and sincere cooperation

- Principle of sincere cooperation
- in order to apply better the SSC (and FMW) and protect better migrant workers rights,
- In order to avoid fraud and error

- In case of A1 and posting – mutual trust needed
 - Institutions of sending MS should assess properly, guarantee correctness of info in A1, may withdraw or declare invalid
 - Institutions of receiving MS – bound by A1, in doubts ask for annulment
- May cause animosities between MS

Proposed changes regarding posting and A1

- BR

- Replacement posting of max. 24 months total (art. 12)
- EC may adopt implementing acts ensuring uniform application of art. 12 and 13 (art. 76a)

- IR

- Definition of fraud (art. 1)
- Validity and cooperation procedure (art. 5)
- Cooperation in case of doubts (art. 19 and 19a)

Some questions regarding posting based on application of A1 forms

- Is FMW destroying national markets?
- What with highly mobile/migrant workers in times of globalisation?
- Does SSC legislation have to change its basics?
- Can sincere cooperation be dictated to MS in a fragmented EU?

Free movement
= best achievement of the EU
= conditio sine qua non of solid
democracy



Thank you for your attention
koldinsk@prf.cuni.cz

Freedom of Movement in Malta

Facts and Figures

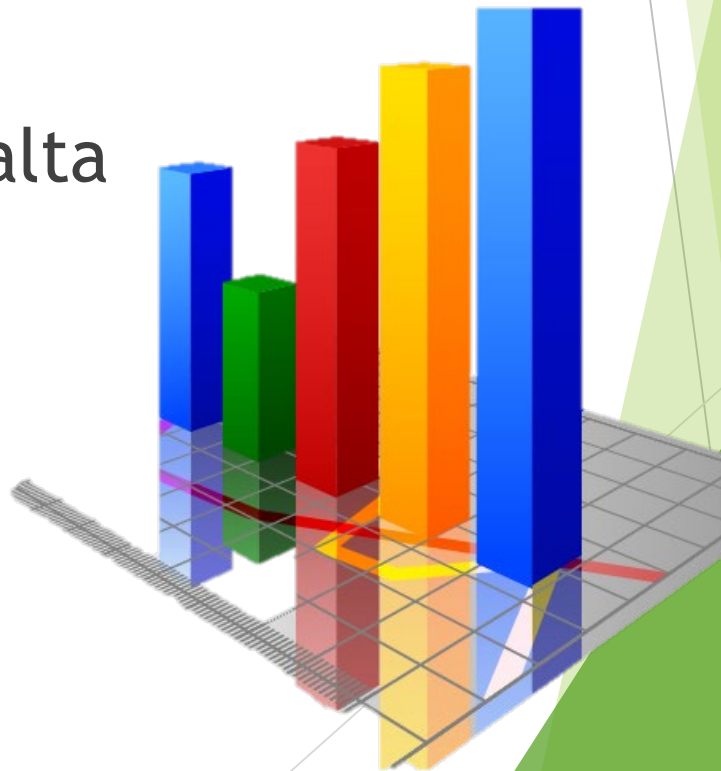


6th November 2019

Dolmen Hotel, Qawra, SPB 2402 St. Paul's Bay

Presentation Overview

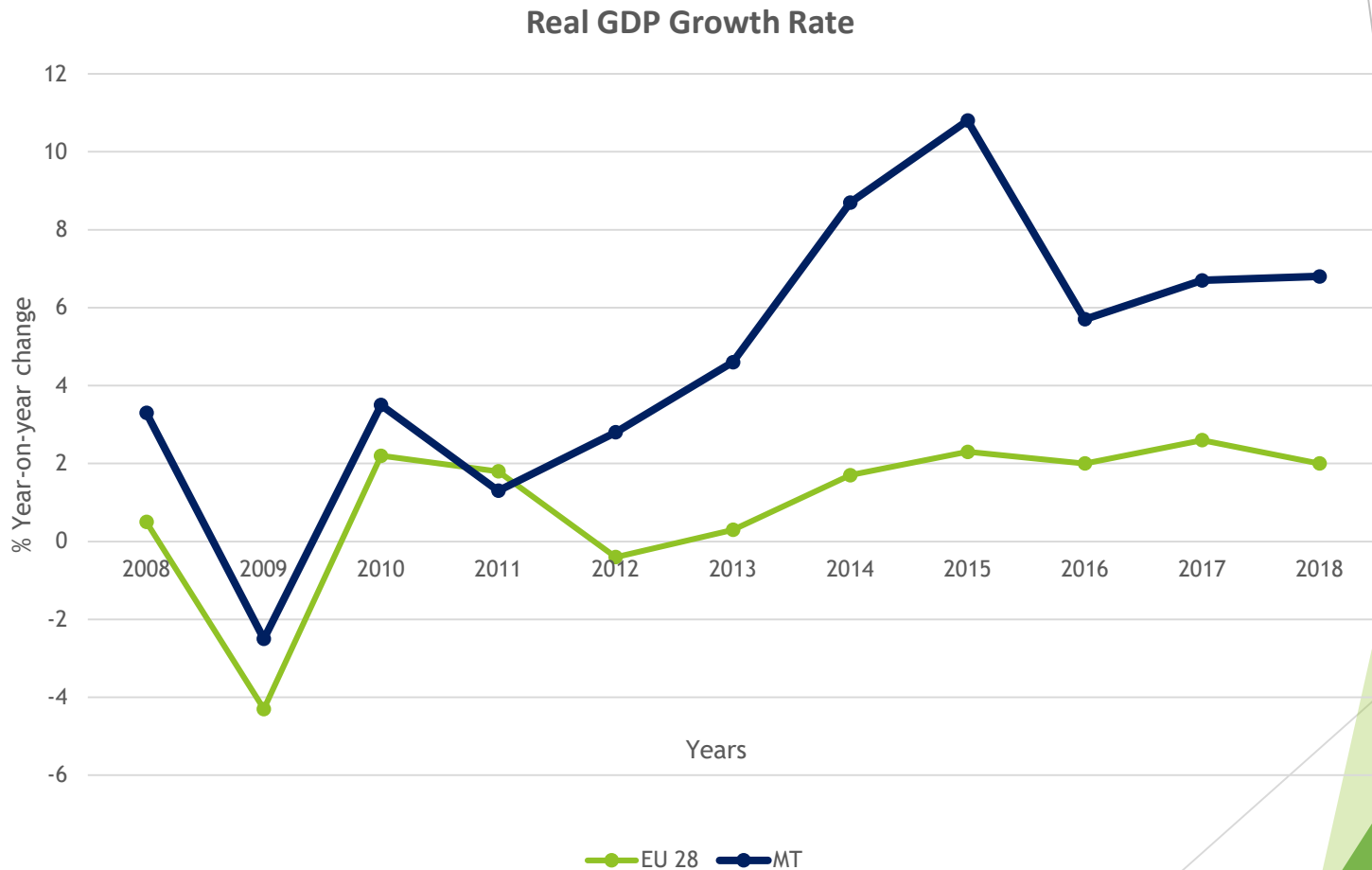
- ▶ Economic Situation
- ▶ Employment Trends
- ▶ Foreign Workers in Malta





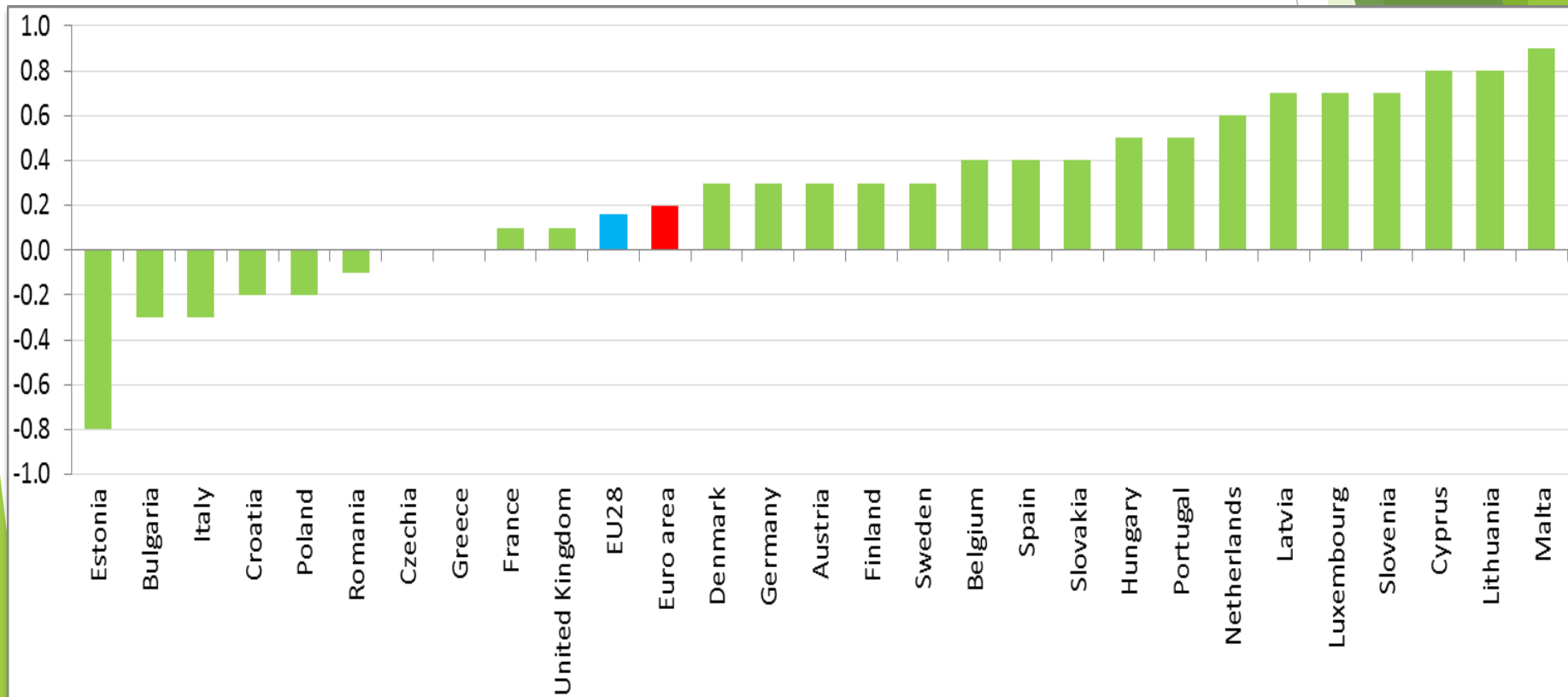
Economic Situation

Economic Situation – Setting the context (i)

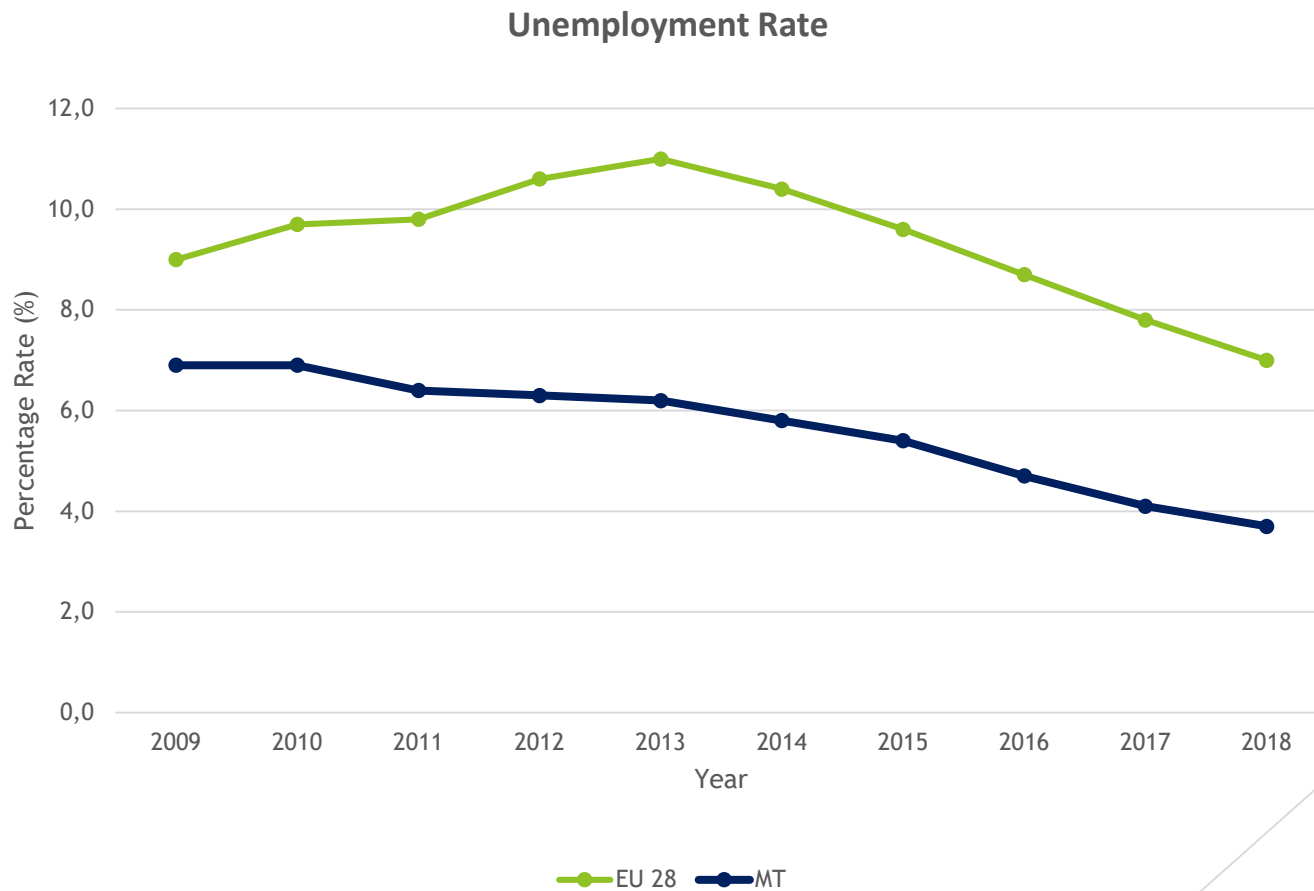


Economic Situation – Setting the context (ii)

Member States' employment growth rates in the third quarter of 2018
% change over the previous quarter, *based on seasonally adjusted data*

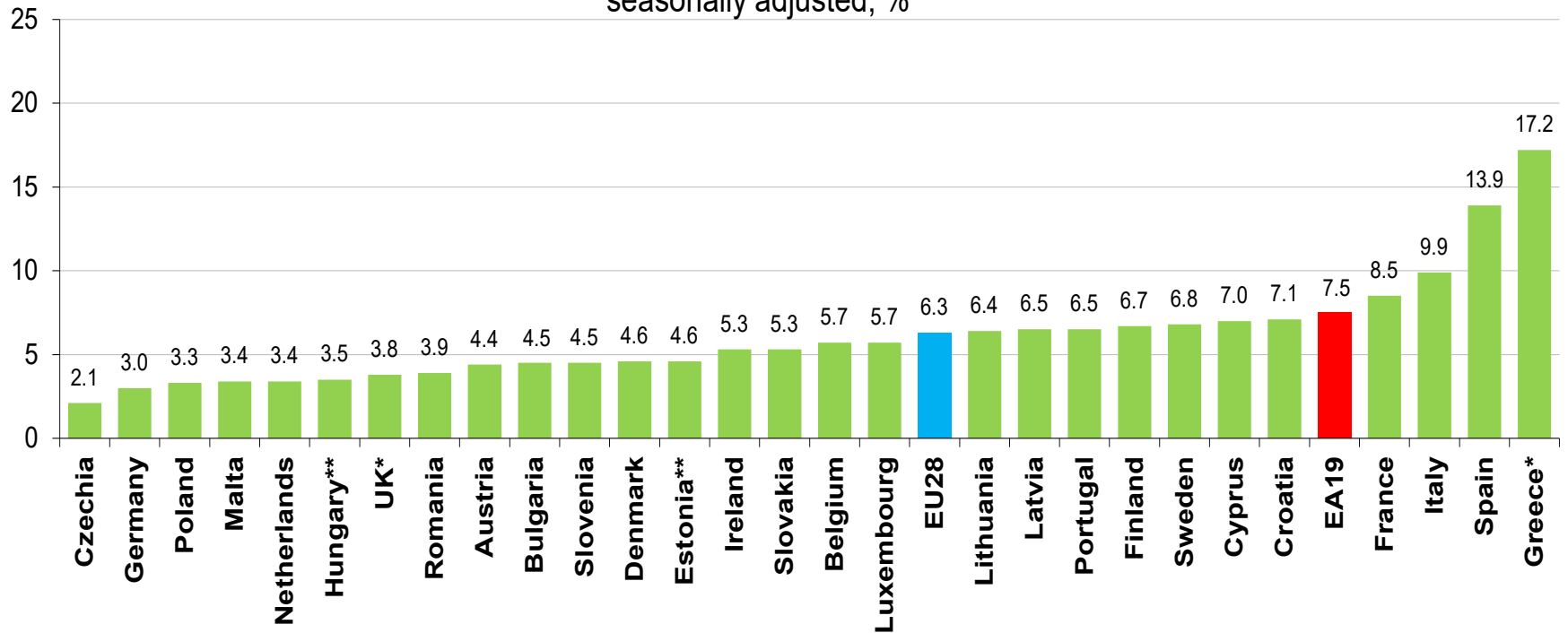


Economic Situation – Setting the context (iii)



Economic Situation – Setting the context (iv)

Unemployment rates in July 2019
seasonally adjusted, %

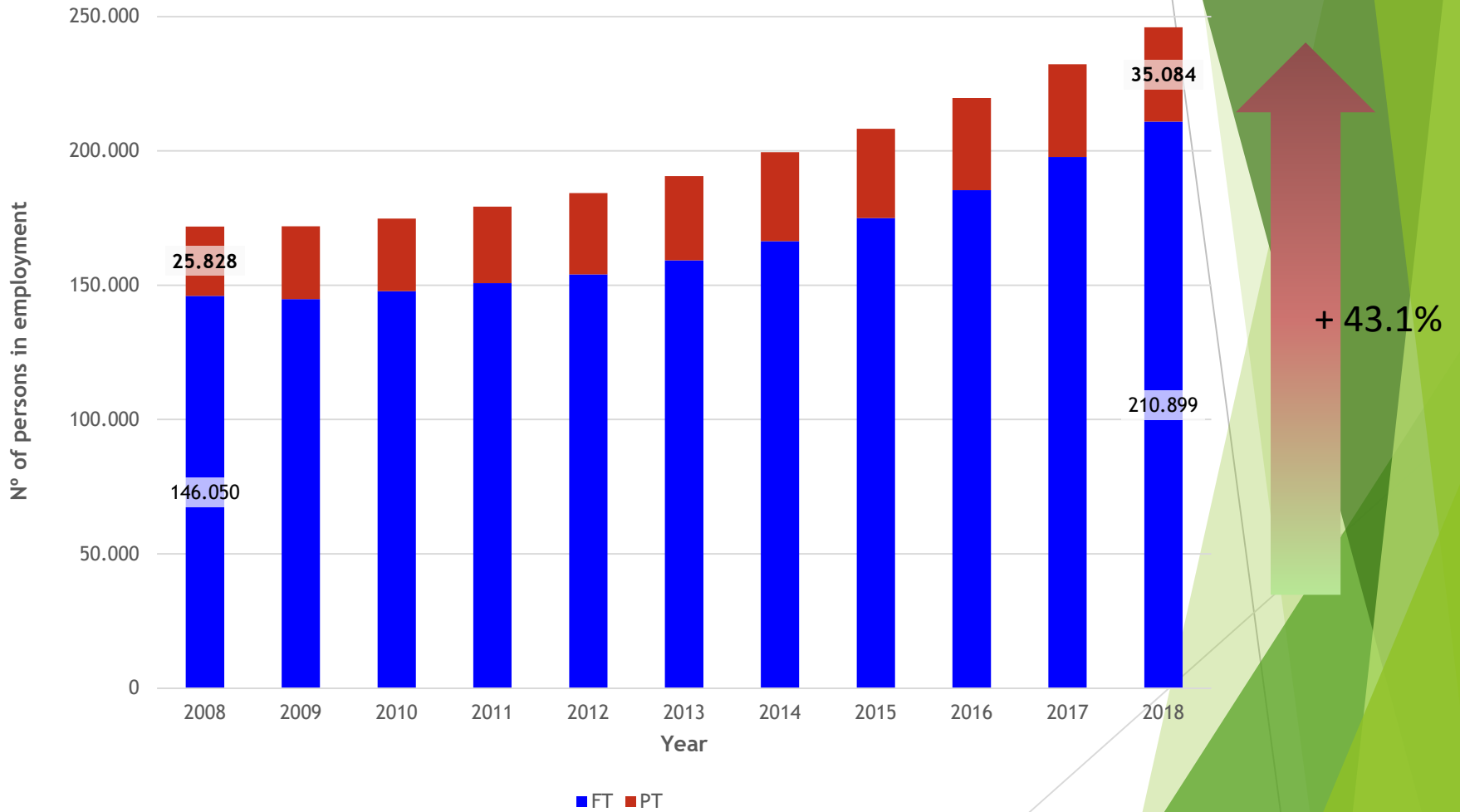


* May 2019 ** June 2019

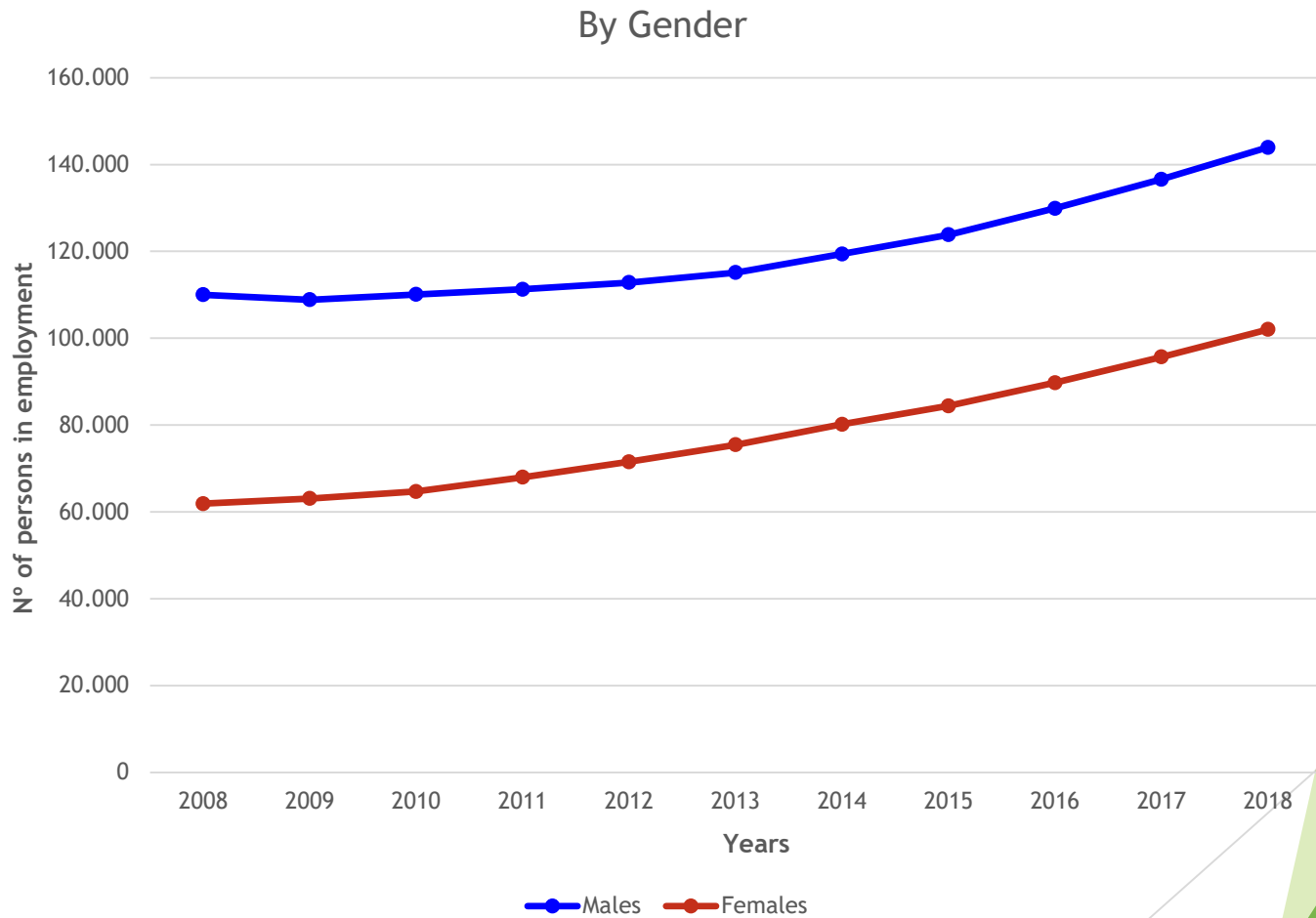


Employment Trends

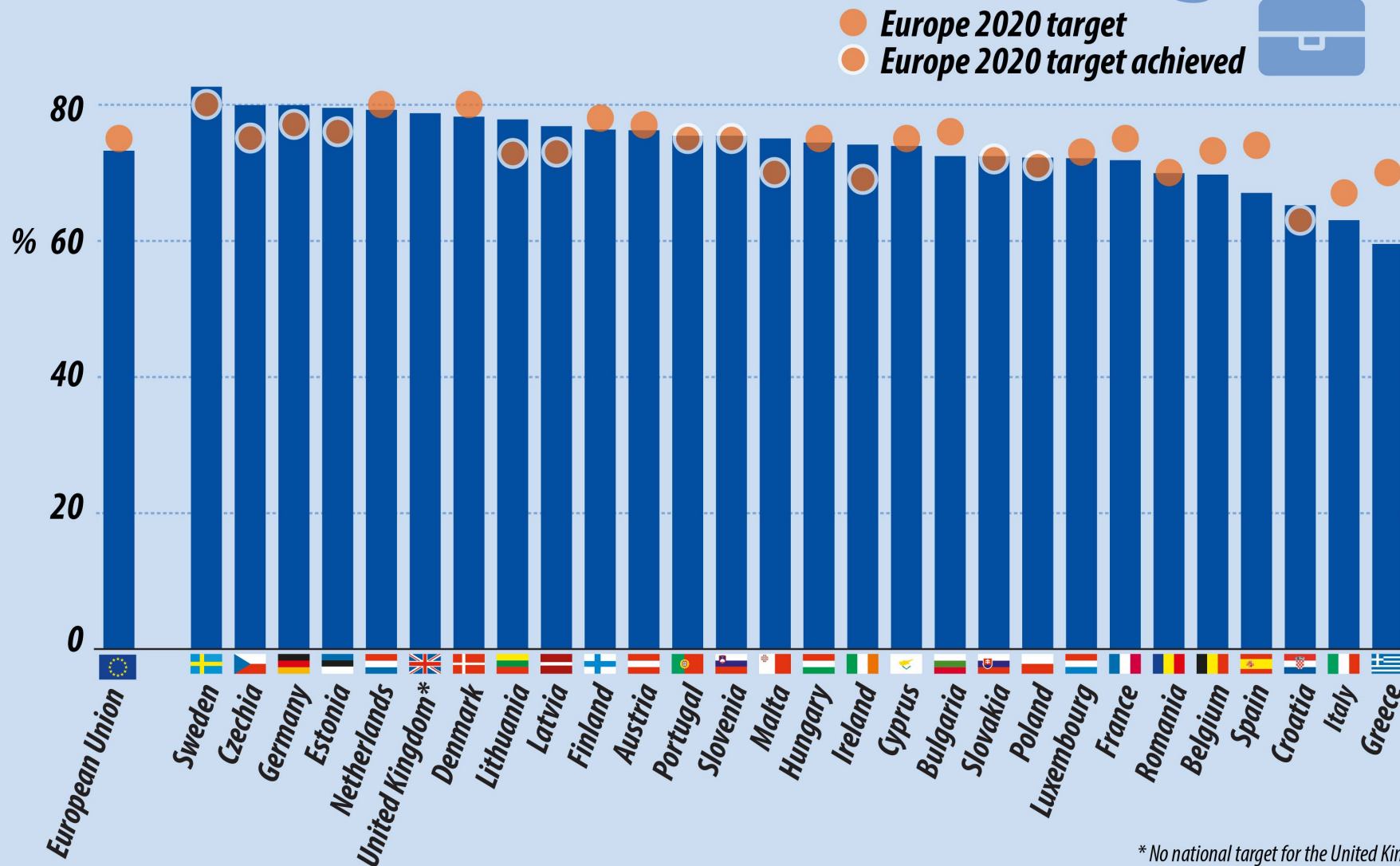
Employment (i)



Employment (ii)



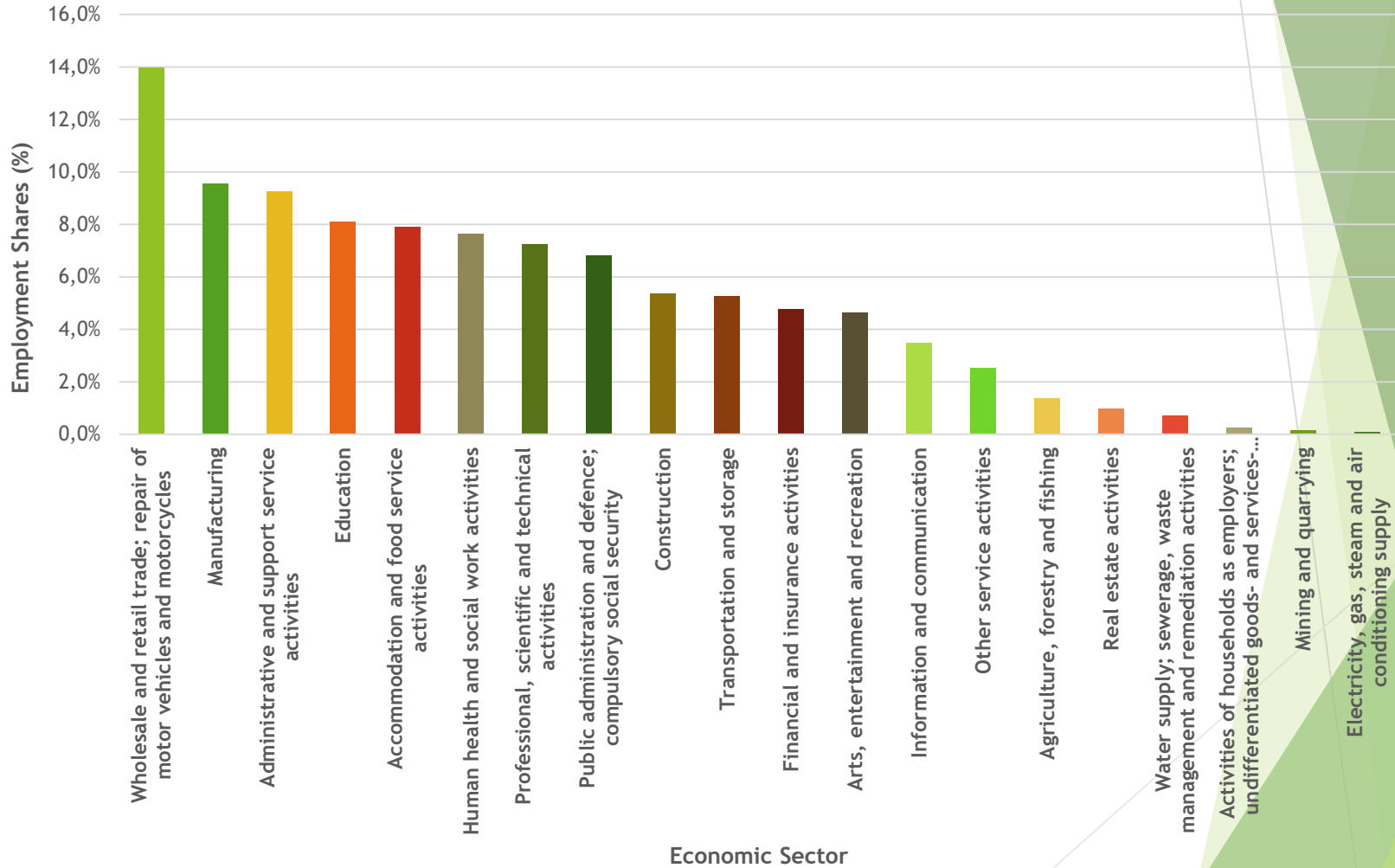
Employment rates for the age group 20 to 64 in the EU (2018, %)



* No national target for the United Kingdom.

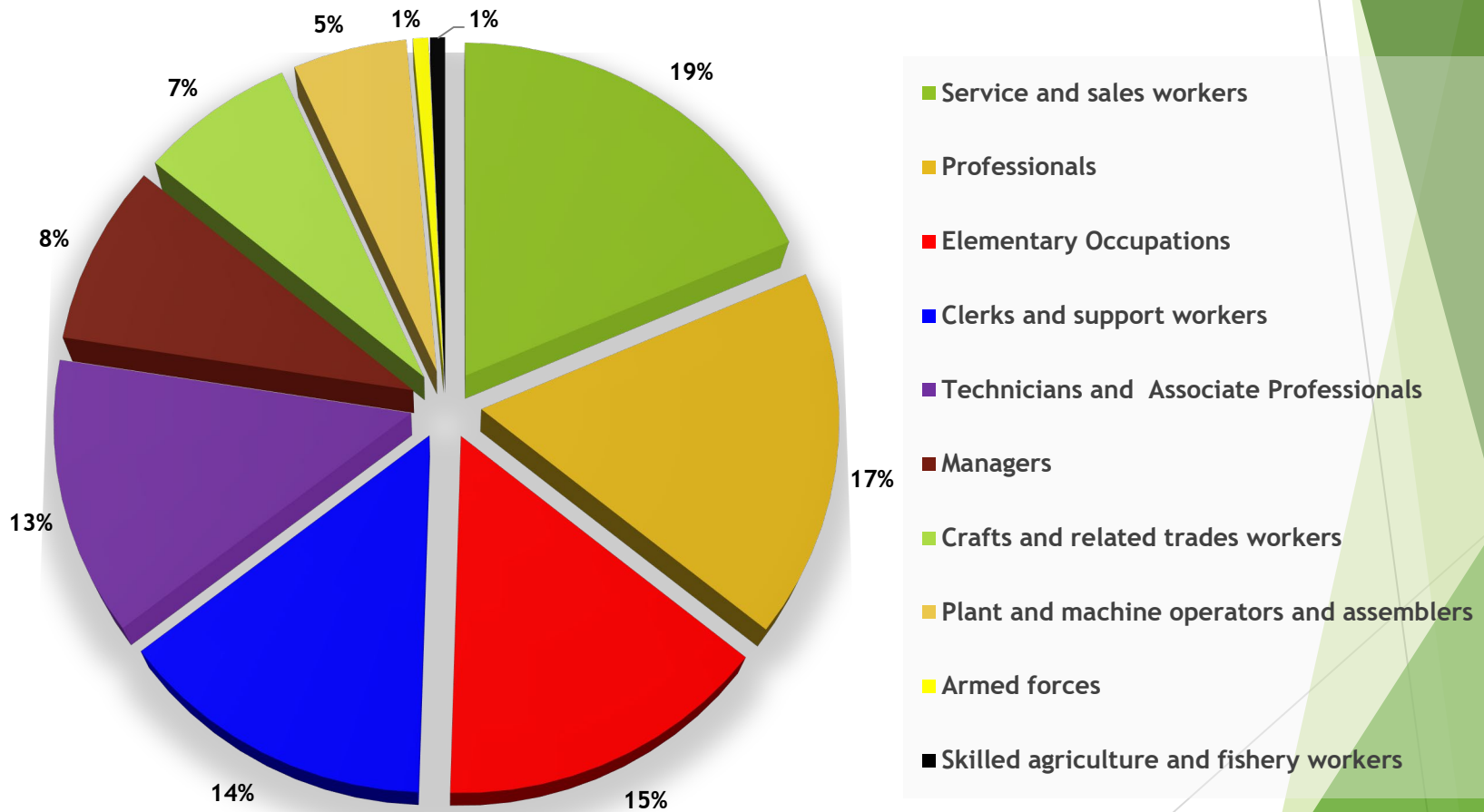
Employment (iv)

By Economic Sector



Employment (v)

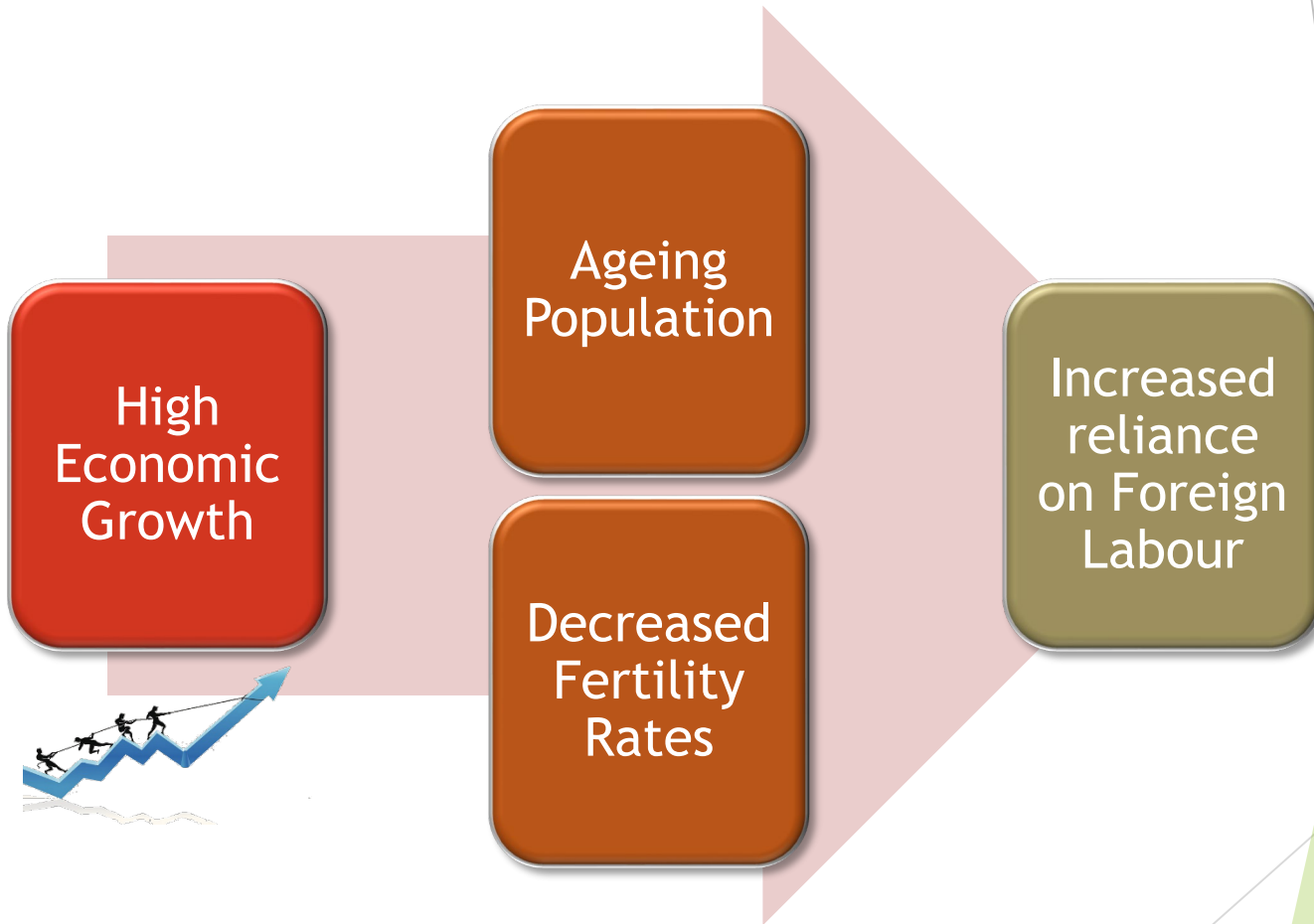
By major Occupation group (ISCO-08)



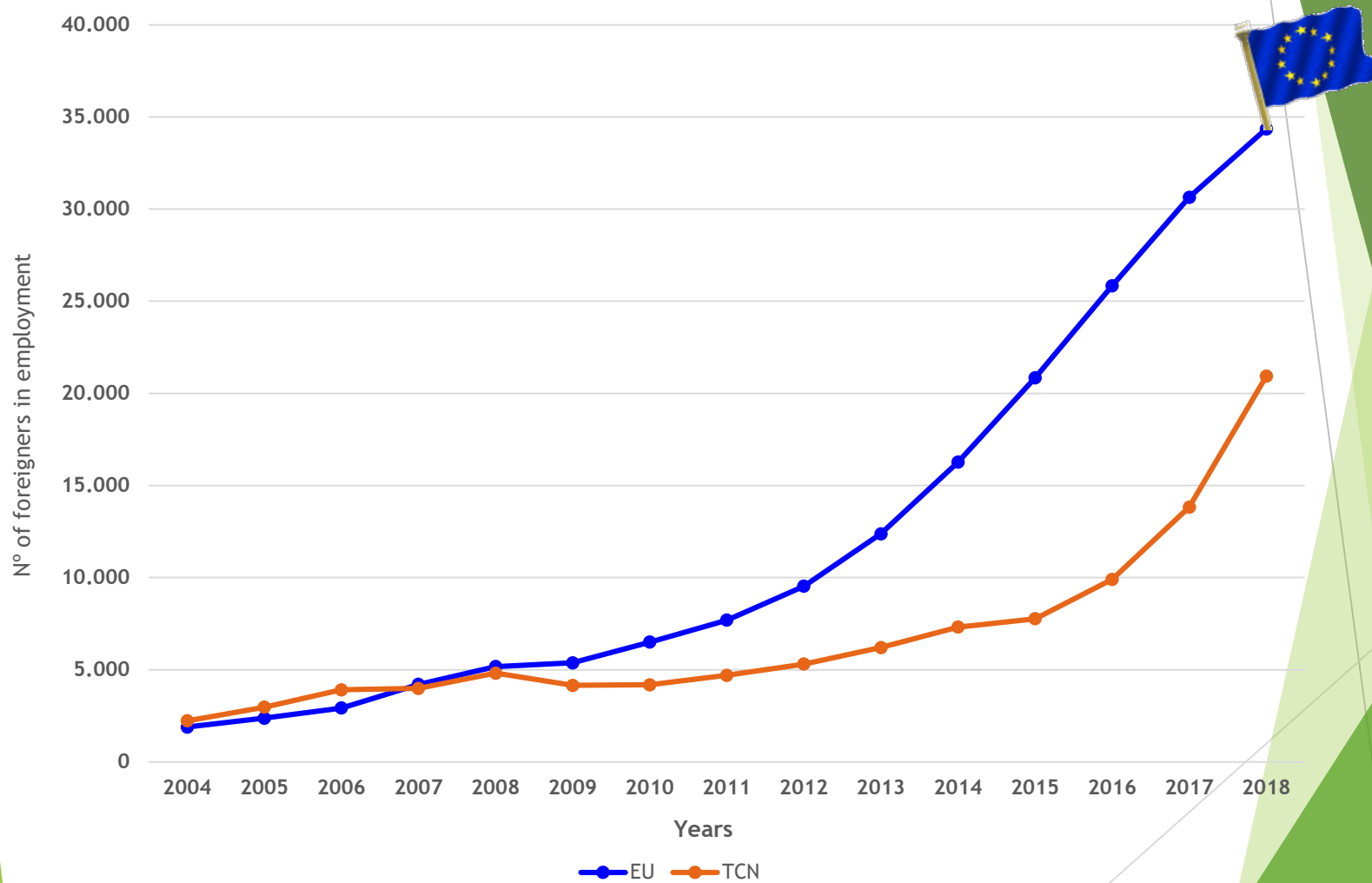
Foreign Workers



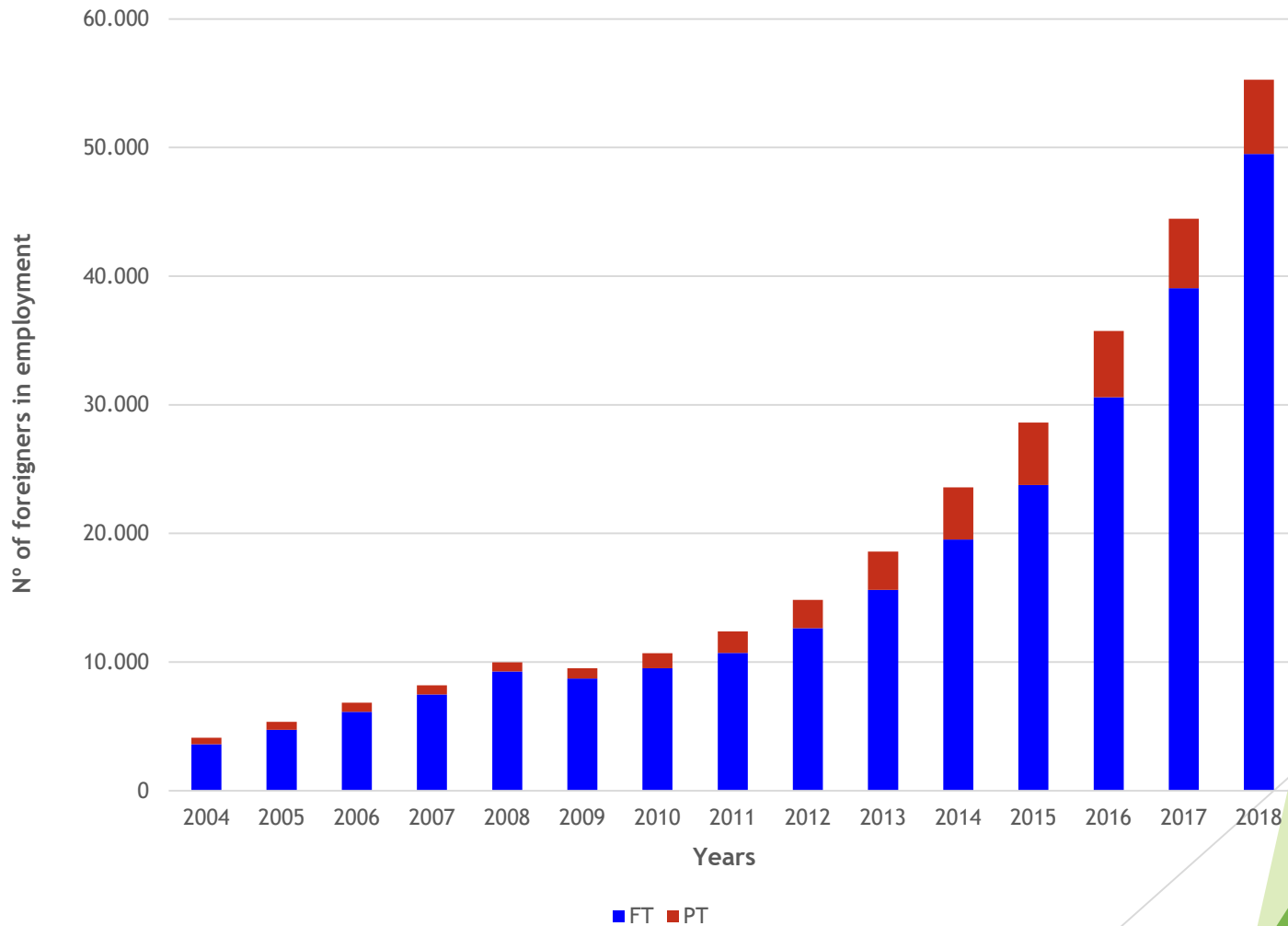
Foreign workers (i)



Foreign Workers (ii)

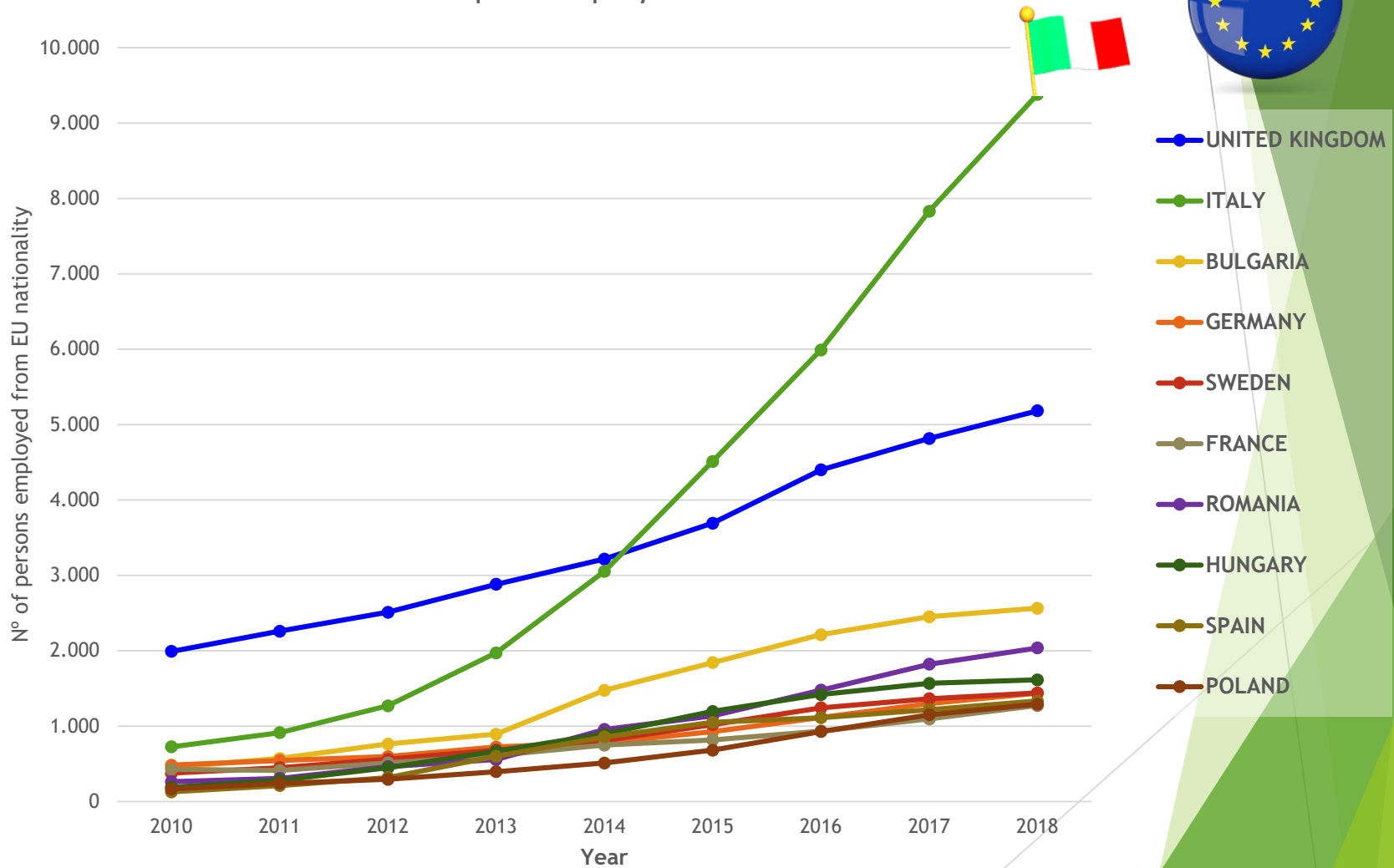


Foreign Workers (iii)



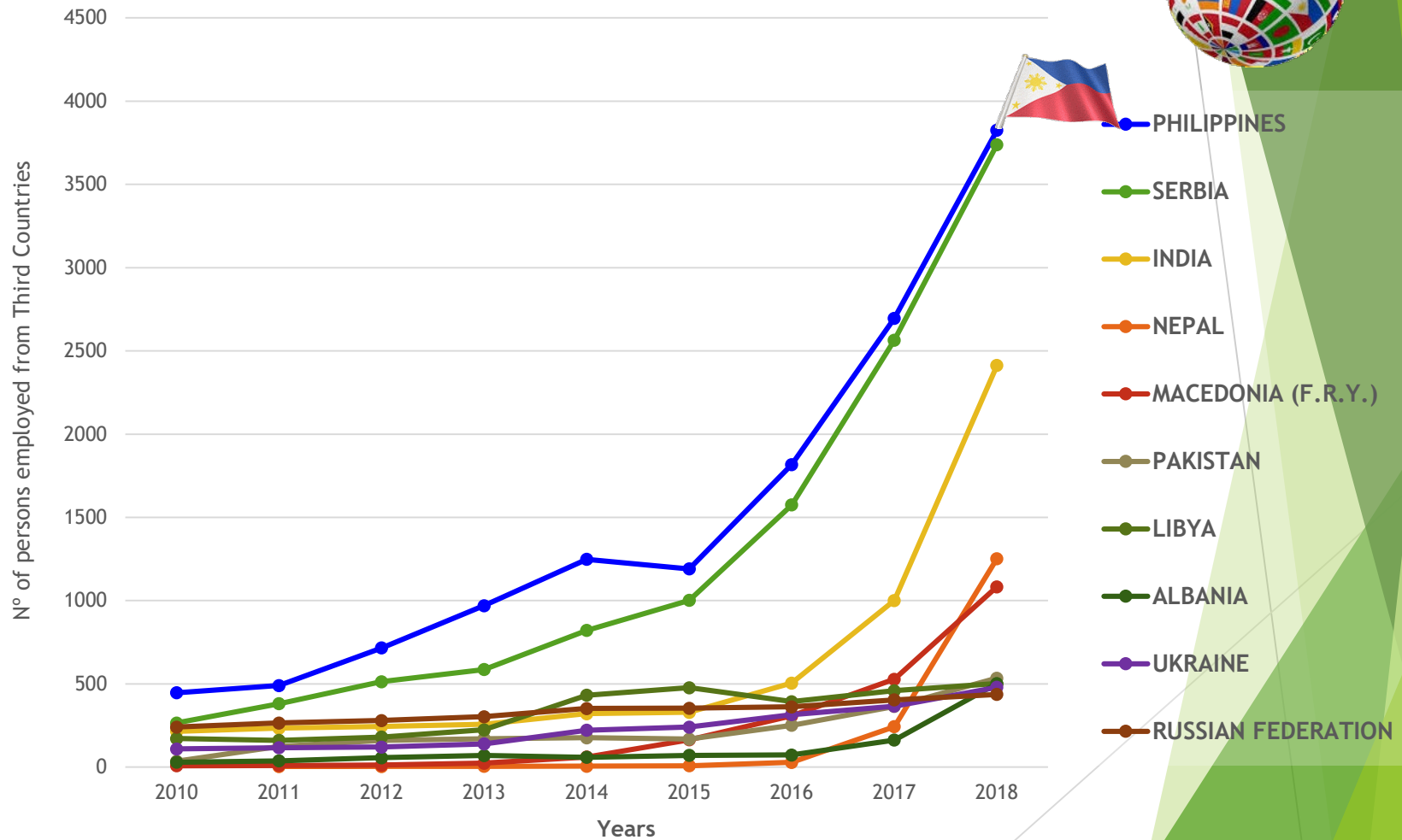
Foreign Workers (iv)

Top 10 Employed EU Nationalities



Foreign Workers (v)

Top 10 Employed TCNs





Foreign Workers (vi)

Sector	2010	2018	Change
[A] Agriculture, Forestry & Fishing	1.8	8.1	6.3
[B] Mining & Quarrying	2.5	18.8	16.3
[C] Manufacturing	5	16.8	11.8
[D] Electricity, Gas, Steam	0	12.4	12.4
[E] Water Supply	2.3	8.3	6.0
[F] Construction	7.9	28.4	20.5
[G] Wholesale & Retail Trade	2.9	13.1	10.2
[H] Transportation & Storage	2.6	16.2	13.6
[I] Accommodation & Food Service Activities	11.8	41.6	29.8
[J] Information & Communication	7.3	27.9	20.6
[K] Financial & Insurance Activities	4.9	18.8	13.9
[L] Real Estate Activities	4.4	18.3	13.9
[M] Professional, Scientific & Technical Activities	9.6	33.2	23.6
[N] Administrative & Support Service Activities	12.4	35.5	23.1
[O] Public Administration	1	1.6	0.6
[P] Education	5.3	10.5	5.2
[Q] Human Health & Social Work Activities	6.9	29.3	22.4
[R] Arts, Entertainment & Recreation	34.5	58.6	24.1
[S] Other Service Activities	7.4	21.6	14.2
Total	6.1	22.6	16.5

Foreign Workers (vii)

Major Occupation Group	2010	2018	Change
[1] Managers	11.1%	26.4%	15.3%
[2] Professionals	5.6%	17.6%	12.0%
[3] Technicians and Associate Professionals	8%	20.9%	12.9%
[4] Clerks and support workers	6%	22.5%	16.5%
[5] Services and sales workers	5.6%	23.9%	18.3%
[6] Skilled Agricultural, fishery and forestry workers	2.6%	7.5%	4.9%
[7] Craft and related trades workers	8.2%	24.3%	16.1%
[8] Plant and machine operator and assemblers	3.5%	21.0%	17.5%
[9] Elementary Occupations	3.8%	27.4%	23.6%
Total	6.1%	22.6%	16.5%

Foreign Workers (viii)

Major Occupation Group	2004		2018	
	Foreigners	Nationals 	Foreigners	Nationals 
1-3	52.4	30.9	35.4%	40.1%
4-5	20.9	28.0	33.7%	32.6%
6-9	26.8	40.1	30.9%	27.4%

1-3: Managers | Professionals | Technical & Associate Professionals

4-5: Clerical grades | Services & Sales workers | Skilled Agricultural & Fishery workers

6-9: Craft & related workers | Plant & Machine Operators | Elementary Occupations



Thank you
for your attention



Determination of Applicable Legislation

The Maltese Practice

Michelle Xuereb – Manager Insurability

Department of Social Security



Overview

- Procedures for Determination of Applicable Legislation
 - Article 11
 - Article 12
 - Article 13
- Concluding an Agreement under Article 16
- Issuing the A1 document

Article 11 – General Rule

- Basic principle: *'lex loci laboris'* –the state-of-work principle

Article 11 of 883/2004: *'a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State'*

- Applicable for active persons
- Employed
- Self-employed

Article 11 – General Rule

Procedure for first time applicants to register with the Social Security scheme:

- ▶ Online application available on Servizz.gov Portal
- ▶ Physical application through one of the Social Security Offices

- ▶ Documents required:
 - EU Nationals : Document of Identification
Contract of Employment

 - Non-EU Nationals: Document of Identification
Contract of Employment
Valid Employment License issued by Identity Malta



Article 11 – General Rule

Of particular interest for Malta.....

- ▶ Article 11(4): Mariners

‘An activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of a Member State shall be deemed to be an activity pursued in the said Member State’.

- ▶ Documents Required:

- Identification Document
- Employment Contract
- Registration Certificate of the Vessel (if recently registered)
- ❖ For Mariners who are TCNs legally resident in a Member State, the residence permit from the Member State of residence



Article 11 – General Rule

- ▶ Article 11(5): Aircrew

‘An activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be an activity pursued in the Member State where the home base, as defined in Annex III to Regulation (EEC) No 3922/91, is located.’

- ▶ Documents Required:

- Identification Document
- Employment Contract and
- The Assignment contract

Article 11 – General Rule

BUT...

1. What if the employer is located outside of Malta?
1. What if the Maltese undertaking/company employs a worker to carry out the work activity in the MS of residence?



Article 11 – General Rule

1. If the employer does not have a physical presence in Malta
 - The employer must register with the Inland Revenue Department
 - A Permission to Employ (PE number) is allocated to the employer
 - Payments of social security contributions to be effected in accordance with Maltese national law
2. If the employee will perform the work from his MS of residence
 - The legislation of the MS of residence applies
 - The Maltese employer is directed to the competent institution in the MS of residence to make the necessary arrangements to effect social security payments in that MS.

Article 12 - Posting

Conditions to be satisfied:

- ▶ *maintain attachment to scheme of MS in which employer normally operates*
- ▶ *normally carries out its activities in that MS*
- ▶ *maintains direct relationship*
- ▶ *anticipated duration does not exceed 24 months*
- ▶ *not sent to replace another posted person*
- ❖ *may include persons recruited with a view to be posted as long as he/she is attached to social insurance system of MS of employer for at least **one month***

Posting Provisions cannot be applied:

- ▶ If worker is placed at the disposal of another undertaking
- ▶ Worker recruited in MS A to be sent by an undertaking in MS B to another in MS C

Provisions apply also to self-employed if person normally self-employed



Article 12 – Posting

Procedure

- ▶ Employer's Questionnaire – when applying for an A1 document
- ▶ In order to determine if the employer normally carries out its activities in Malta, the following aspects are examined:
 - place of registered office and administration;
 - administrative staff and the place where they carry out their duties;
 - contracts concluded in the course of economic activity in Malta and abroad;
 - income from activities in Malta and abroad over the past 12 complete calendar months before the posting of workers;
 - economic activity in Malta over the last 12 months before the posting of workers economic activity in Malta after posting of workers;
 - other objective criteria, taking into account the nature of ongoing activities



Article 13 – Pursuit of Activities in Two or More MS

Procedure:

- A person pursuing activities in two or more Member States should contact the social security institution of his/her Member State of residence who is competent to perform the procedure to determine the applicable legislation
- The institution of the Member State of residence shall inform the Member States involved with its determination of legislation applicable
- If the Member States concerned do not object to the determination within 2 months, the determination is considered as final



Article 13 – Pursuit of Activities in Two or More MS

- In order to determine where the substantial activity is carried out
 - Substantial activity means at least 25% of the overall activities carried out
 - For Employed persons, these are measured against the working time and/or the remuneration
 - For Self-Employed persons, these are measured against the turnover, working time, number of services rendered and/or income
 - ❖ Marginal Activities up to 5% of remuneration and/or regular working time to be disregarded
- Documents Required:
 - Employed: Contract of Employment
Working Schedules
Statement of Earnings (Payslips, FS3 documents)
 - Self-Employed: Contract for Services
Working Schedules (where applicable)
Statement of Earnings (Profit & Loss Accounts, Tax Returns)



Article 16 - Exceptions

- ▶ Two or More MS may make different arrangements :
 - ▶ By common agreement
 - ▶ Provide for Exceptions to Articles 11-15
 - ▶ In the interest of certain persons or categories of persons
- ▶ When it is established that such an agreement is justified, Malta contacts the other MS involved by presenting its case and substantiating the need for an agreement
- ▶ The receiving MS decides whether to accept or refuse such agreement

Once it is determined that insurability lies under Maltese Law.....

- Online application available on Servizz.gov Portal

forms.gov.mt Search

1 of 3 Previous Personal Details Next

Signed in as: Unauthenticated Form Ref: MSP007

Date: 10/10/2019

Request for Entitlement to remain insured in Malta (Form A1)

Fields marked with an asterisk "*" are mandatory.

Personal Details Of The Holder:

Name* Surname* Social Security Number Gender: Female Male

Surname at birth Place of Birth Date of Birth* Nationality*

Address in Country of Residence:
(The address in which the applicant habitually resides and where the habitual centre of interests is to be found. This is normally the address on your Identity Document.)

Street, N°* Post Code*

Country* Town*

Address in Country of stay:
(The address in which you will be temporarily residing and the applicant intends to return to his / her place of residence as soon as the duration of the activity in the other Member State is terminated.)

Street, N° Post Code

Country* Town*

Mobile No* Email Address*

Member State legislation which applies:
(Period of posting in the other member state)

Starting date* Ending date*

Details of employer/self employment:

Employee Self-employed activity First time you apply?

Employer/self-employed activity code* Name or business name*

Employers PE number in case of employed, or VAT number in case of self-employed person.

Registered address:

Street, N°* Post Code*

Country* Town*

Details of employer/self employment where an activity is pursued:

Name(s) or business name(s) of the firm(s) or ship(s) or the home base(s) where you will be employed*

Address(es) or name(s) of ship(s) or the home base(s) where you will be (self) employed in the 'host' State(s)*

Or no fixed address in State(s) of (self) employment Host State Country*

Include Sector of Economic Activity*

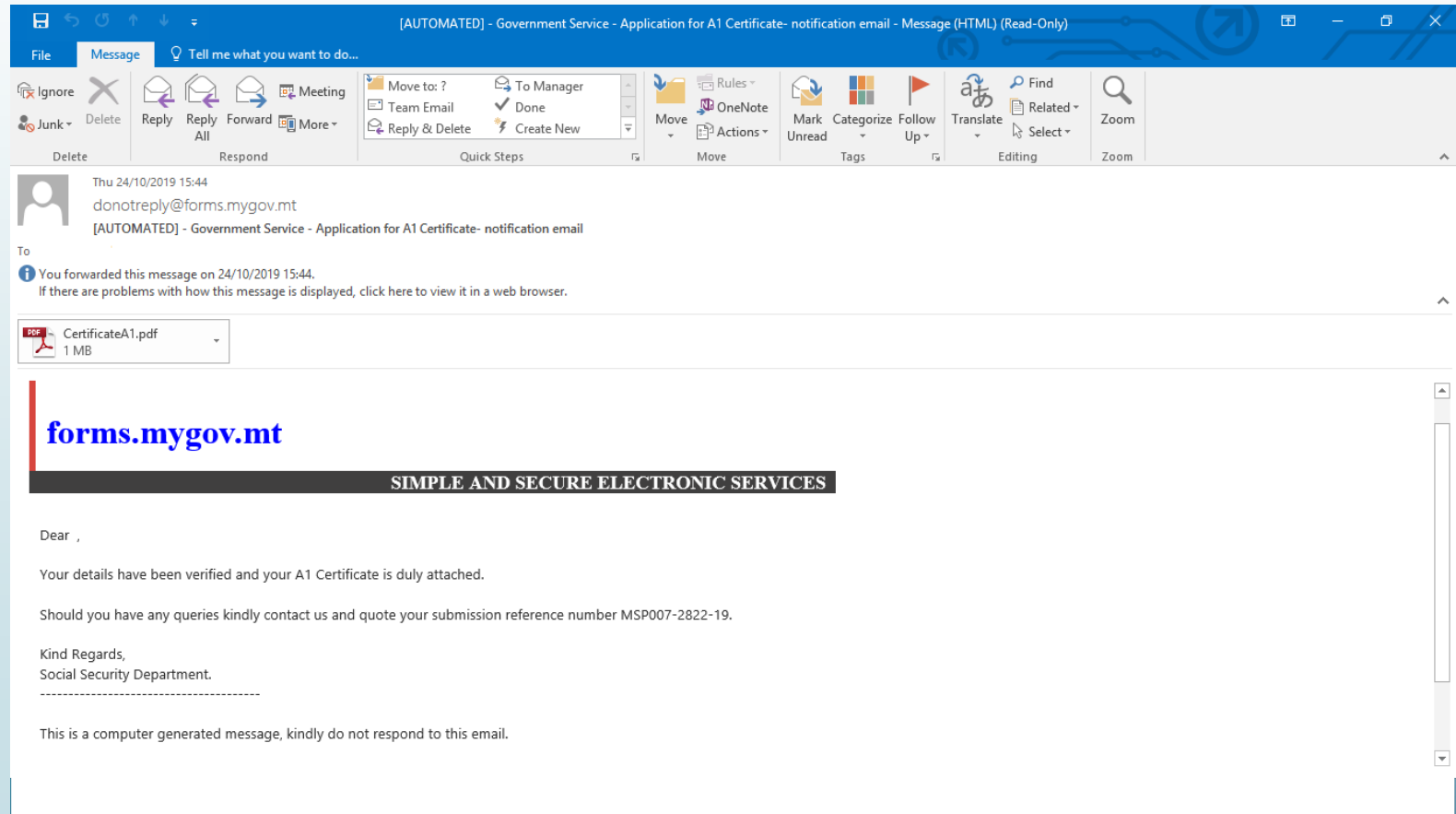
PREVIOUS NEXT

A decorative graphic on the left side of the slide. It features a dark blue vertical bar on the far left. A black arrow points to the right from the top of this bar. Several thin, light blue curved lines originate from the bottom left and sweep upwards and to the right across the slide.

Issuing the A1 document

- Applications are vetted against the criteria described for Articles 11, 12 and 13
- Applicant is contacted electronically should there be any further requirements
- A1 document is generated and sent electronically to the applicant

Issuing the A1 document



The screenshot shows an Outlook window with the following details:

- Subject:** [AUTOMATED] - Government Service - Application for A1 Certificate- notification email - Message (HTML) (Read-Only)
- Sender:** donotreply@forms.mygov.mt
- Received:** Thu 24/10/2019 15:44
- Attachments:** CertificateA1.pdf (1 MB)
- Body Content:**

forms.mygov.mt
SIMPLE AND SECURE ELECTRONIC SERVICES

Dear ,

Your details have been verified and your A1 Certificate is duly attached.

Should you have any queries kindly contact us and quote your submission reference number MSP007-2822-19.

Kind Regards,
Social Security Department.

This is a computer generated message, kindly do not respond to this email.

Issuing the A1 document

- ▶ The document contains unique identifier which prevents forgery.

Form Reference N°MSP007-2498-19

Coordination of Social Security Systems

A1

Certificate concerning the social security legislation which applies to the holder

EU Regulations 883/2004 and 987/2009 (*)

INFORMATION FOR THE HOLDER

This certificate concerns the social security legislation which applies to you and confirms that you have no obligations to pay contributions in another State. Before you leave the State where you are insured to go to another State to work, make sure you have the documents which entitle you to receive the necessary benefits in kind (e.g. medical care, treatment in hospital, and other) in the State where you are working.

- If you are staying temporarily in the State where you are working, ask your health care institution for the European Health Insurance Card (EHIC). You must show this card to your health care provider if you need benefits in kind during your stay.
- If you are going to be living in the State where you are working, ask your health care institution for the A1 document and submit it as soon as possible to the competent health care institution of the place you are going to work (**).

Provisionally the insurance institution in the State of stay will also provide special benefits in the event of an accident at work or an occupational disease.

1. PERSONAL DETAILS OF THE HOLDER

1.1 Personal Identification Number	<input type="checkbox"/> Female <input checked="" type="checkbox"/> Male
1.2 Surname	
1.3 Forenames	
1.4 Surname at birth (***)	
1.5 Date of birth	1.6 Nationality
1.7 Place of birth	
1.8 Address in the State of residence	
1.8.1 Street	1.8.3 Post code
1.8.2 Town	1.8.4 Country code
1.9 Address in the State of stay	
1.9.1 Street, N°	1.9.3 Post code
1.9.2 Town	1.9.4 Country code

2. MEMBER STATE LEGISLATION WHICH APPLIES

2.1 Member State	MALTA		
2.2 Starting date	15/05/2019	2.3 Ending date	14/05/2020
<input type="checkbox"/> 2.4 The certificate applies for the duration of the activity			
<input type="checkbox"/> 2.5 The determination is provisional			
<input type="checkbox"/> 2.6 Transitional rules apply as provided for by Regulation (EC) No 883/2004			

(*) Regulations (EC) No 883/2004, Articles 11 through 16, and Regulation (EC) No 987/2009, Article 19.
(**) For Spain, Sweden and Portugal, the certificate must be handed over to, respectively, the head provincial offices of social security National Institute (INSS), the social insurance institution and the social security institution of the place of residence.
(***) Information given to the institution by the holder when this is not known by the institution.

1/3

Form Reference N°MSP007-2498-19

Coordination of Social Security Systems

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1.8.2 Town	1.8.4 Country code
1.9 Address in the State of stay	
1.9.1 Street, N°	1.9.3 Post code
1.9.2 Town	1.9.4 Country code

**THANK YOU
FOR YOUR
ATTENTION**





Posting of Workers *the Maltese Practice*

Dr Pamela Dingli

Department of Industrial and Employment Relations





Aim

Aim of the posting of workers legal regime is to reconcile

- (i) The freedom to provide services
- (ii) The protection of the posted worker





Legal Framework – Employment Rights

The Posting of Workers in Malta Regulations (S.L. 452.82), which transposes the following EU Directives

- EU Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
- EU Directive 2014/67 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services





Posted employee

"posted employee" means an employee of a foreign service provider who does not normally work in Malta but who for a limited period of time is sent by the foreign service provider to work in Malta





Foreign Service Provider

"foreign service provider" means a service provider which is established in a Member State other than Malta





Three situations of posting

When the foreign service provider –

- Sends posted employees in Malta on his account and under his direction, under a contract concluded between the foreign service provider making the posting and the party for whom the services are intended,
- Sends posted employees to an establishment or to an undertaking in Malta which is owned by the foreign service provider,
- Being temporary employment undertaking or placement agency, hires out a worker to a user undertaking established or operating in Malta





Three situations of posting

In all three scenarios,

- There must be an employment relationship between the foreign service provider and the worker being posted
- The posting must be temporary
- The worker intends to go back to the place where he habitually works





Rights

- The conditions of work which are given to posted employees who have notified their intention to work in Malta shall not be less than the minimum conditions of work (by virtue of a law) given to a comparable employee in the same place of work.





Rights

- “comparable employee” means an employee in an undertaking located in Malta who is engaged in the same or similar work or occupation, due regard being given to other considerations, including seniority, qualification and skills





Rights

Equality of Treatment

- Maximum work periods and minimum rest periods
- Minimum paid annual holidays
- Minimum rates of pay, including overtime rates
- Equality of treatment between men and women





Rights

- Protective measures with regards to terms and conditions of employment protecting pregnant women or women who have given birth
- Protective measures with regards to terms and conditions of employment protecting children and young people
- Measures relating to health, safety and hygiene at work
- Protection of temporary agency workers





Procedure

Since the transposition of the 2014 enforcement directive, every posting (per worker) has to be notified to the competent authority - DIER.

The obligation of notification is imposed on the foreign service provider.

The notification is to reach DIER prior to the date of posting, or at the latest on the day of the posting.





Procedure

The notification shall contain the relevant information necessary in order to allow factual controls at the workplace –

Identity of the service provider, address of place where the worker habitually works, information on the posted worker, dates of beginning and end of the posting, contact persons representing the employer (foreign service provider), the type of work to be carried out, the name and address of the host Malta-based undertaking.





Procedure - obligations

The Maltese undertaking is to keep a copy of the said notification.

The foreign service provider is to keep, make available and retain the contract of employment, together with other documents such as payslips, timesheets, proof of payment of wages .. to be kept at the Maltese undertaking.

Documents to be translated into English.





The E-form

- <https://eforms.gov.mt/pdfforms.aspx?fid=wes072e>

The screenshot shows the website **dier.gov.mt** (Department for Industrial & Employment Relations). The main navigation menu includes: ABOUT DIER, EMPLOYMENT CONDITIONS, INDUSTRIAL RELATIONS, INTERNATIONAL RELATIONS, and LEGISLATION. The current page is titled "Information" under the "Posting of Workers in Malta" section.

YOU MIGHT BE INTERESTED IN

- Starting a New Job
- Wages
- Customer Care
- Hours of Work
- Leave
- Termination of Employment
- National and Public Holidays
- Sectoral Minimum Conditions of Employment
- Breaching Conditions of Employment
- Young Persons and Minors in Employment
- Measures against Precarious Work

CONTACT INFORMATION:

Contact Name

Department for Industrial and Employment Relations
121, Melita Street,
Valletta - Malta
VLT 1121
[View Map](#)

Information

Who is to be considered a Posted Worker in Malta?



A Posted Worker in Malta is an employee of a foreign undertaking who does not normally work in Malta but who for a limited period of time is sent by the foreign undertaking to work in Malta.

Posting of Workers in Malta is regulated by the Posting of Workers in Malta Regulations, 2016 (S.L. 452.82). These regulations apply to foreign undertakings which

party for whom the services are inter making the posting and the worker d

- » send posted employees to an es undertaking, provided there is an er worker during the period of posting;
- » being temporary employment un established or operating in Malta, employment undertaking, or placem

Equality of Treatment

Notification

While carrying out work in Malta an employee being posted from an EU/EEA country is not required to apply for a working licence in Malta. In the case of a third country national (TCN) employee who is employed by a posting undertaking that is established in an EU/EEA country, there is no need to go through a working licence procedure in Malta if such posted worker already holds a working licence issued in the country where the posting undertaking is established.

For any foreign national who is posted in Malta by an undertaking established outside an EU/EEA country, a working licence is required to be issued by Jobsplus jobsplus.gov.mt.

In any case of a posting in Malta, the undertaking posting the worker to Malta is obliged to notify the Director of Industrial and Employment Relations (DIER) of its intention to post a worker to Malta. A 'Notification of a Posted Worker to Malta' form, prepared for such purpose. The Notification Form accompanied with a copy of the posted worker's employment contract (with the posting undertaking) and, in the case of a TCN posted employee from an EU/EEA country, also with a copy of his existing working licence, should reach Department of Industrial and Employment Relations prior to the commencement of the posting. The undertaking making use of the services of the posted worker is obliged to keep a copy of such Notification Form at the place of work for monitoring purposes by the inspectors of the DIER.





The E-form



e-form

Notification of a Posted Worker to Malta



Issue date

Details of Posting

Name of the undertaking / placement agency posting the worker to Malta

Telephone

FAX

Mobile

Full Name of the undertaking in Malta, to which the worker is to be posted

Address of undertaking / placement agency posting the worker to Malta

Type of work to be carried out by the posted worker

Date of commencement of posting to Malta

Anticipated termination date of posting to Malta

Details of Posted Worker

Name

Date of Birth

Nationality

Type of Identification

Maltese ID Card

Identification no.

E-mail

Personal address in the country where the worker habitually carries out his work

Number of documents attached:

1

(Underneath please find information about documents that are to be supplied with this form and other relevant information on posting of workers to Malta.)

Name of Employer

Date of Notification

Contact Persons

Details of the person who must liaise with the Department in terms of the Regulations





The E-form

Representative in Malta

Details of the person to act as a representative in Malta through whom the social partners may seek to engage the service provider to enter into collective bargaining during the period in which the services are provided. (It is not required that such contact person is present in Malta but he has to be available on a reasonable and justified request)

Relevant Documents Required

The notification form must be supplemented by the following information :-

(a) The contract of employment between the foreign service provider and the posted worker containing :-

- The name, registration number and registered place of business of the employer
- The identity card number, sex and address of the employee and the place of work
- The date of commencement of employment with the foreign service provider
- The normal rates of wages paid to the employee
- The overtime rates of wages paid to the employee
- The normal hours of work
- The periodicity of wage payments
- In case of a fixed term contract of employment , the duration of such a contract
- The number of paid holidays, number of paid vacation leave, number of paid sick leave and any other leave to which the employee is entitled
- The title, grade, nature or category of work for which the employee is habitually employed with the service provider.

(b) A copy of the identification document of the posted employee;

(c) Documents containing information specific to the posting, including, any allowances specific to the posting which will be paid to the posted worker in connection with the posting.





DIER as a competent authority

- Co-operation between MS – establishment, host
- IMI – Internal Market Information System established by Regulation 1024/2012
- Provision of information in the single official national website
- Monitoring



DIER as a competent authority

- Enforcement
- Redress; civil and criminal
- Subcontracting liability - in any civil proceedings instituted by the posted worker with respect to his rights, where there is a subcontracting chain, the posted worker can hold the contractor of which his employer is a direct subcontractor civilly liable in addition to or in place of the employer.
- Cross-border enforcement of financial administrative penalties/fines (imposed on a service provider based in Malta for failure to comply with the host country rules on posting)





Postings in 2018

In 2018, the number of registered posted workers who worked at least one day in 2018 was 326.

206 posted workers were posted from the UK

29 posted from Spain

28 posted from Italy

17 posted from Poland





Postings in 2018

In 2018, the number of notifications received was 477

271 were sent from the UK

69 were sent from Poland

39 were sent from Spain

36 were sent from Italy

21 were sent from Germany





Postings in 2018

A breakdown of the number of notifications by duration

Less than eight days – 109 notifications

Between eight days and one month – 100 notifications

Between one month and six months – 220 notifications

Between six months and twelve months – 44 notifications

Between twelve months and eighteen months – 0 notifications

Longer than eighteen months – 4 notifications





Postings in 2018

Top five sectors

- 1) Electricity, gas, steam and air conditioning supply
- 2) Manufacturing
- 3) Wholesale and retail trade
- 4) Arts Entertainment and Recreation
- 5) Construction





Near-future challenges

- One has to see how the protection of the posted worker will be further enhanced through the European Labour Authority, launched last October ...
- New Directive 2018/957 amending the 96/71 directive





Thank you for your attention

Dr Pamela Dingli

Department of Industrial and Employment Relations

