

MoveS seminar Latvia

Coordination of family benefits and posting of workers in the context of free movement in the EU.

Riga, 23 November 2020

European Union House Aspazijas bulvaris 28

Languages: Latvian/English



Recent developments at EU level on posting

Carita Rammus
EMPL D1 Free movement of workers, EURES

Overview of the presentation

- The revised Posting of Workers Directive
- Report on the implementation of the Enforcement Directive

The Revision of the Posting of Workers Directive (2018/957)

Main elements:

- Remuneration instead of minimum rates of pay, and addition of two core-rights
- Long-term posting after 12 (or 18) months
- Temporary agency work and chain/double posting
- Increased transparency regarding the terms and conditions of employment
- Types of collective agreements
- Transposition and application, link with road transport

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 – 2 new conditions

- **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 in case of mobility 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 universally applicable collective agreement
- Except provisions related to conclusion and termination of employment contract and supplementary occupational retirement pension schemes
- Upon **motivated request** by service provider, the period will **extend to 18 months**

Temporary agency work

- Obligation to apply basic employment conditions that are applied to the temporary agency workers in that MS
- Obligation for user undertakings to inform temporary agency of these terms and conditions of employment
- MS are still allowed to apply also additional terms and conditions of employment according to Art 3(9) as is the situation today

Chain/double posting

- if a temporary agency worker is sent by a user undertaking to work in the territory of another MS, the worker is considered to be posted there by temporary agency
- temporary agency is the employer of the worker and has to comply with the rules of the posting directives
- user undertaking has to inform the temporary agency of sending the worker to other MS

Transparency of information

- information on all the terms and conditions of employment, including the remuneration, has to be made available without undue delay and in a transparent manner on single official national websites
- MS have to ensure that information is accurate and up to date
- in case the website does not indicate which terms and conditions are to be applied, this will be taken into account in determining penalties

Types of collective agreements

- Currently MS have to apply collective agreements declared universally applicable and...
- only in the absence of the declaration system can they apply generally applicable collective agreements or collective agreements concluded by most representative social partners (applicable on the whole territory of MS)
- According to the new rules MS, if they so choose may apply all of the above, provided that their application respects equal treatment

Transposition and application and link with the road transport

- Transposition at any time before 30 July 2020, but application only from **30 July 2020**
- Synchronization clause with *lex specialis* on road transport – the new rules will apply to road transport only from the application date of that legislation (currently under negotiations)

Latest developments

- Practical guide on posting published on 25/09
 - **Living Document, will be updated to reflect recent developments (case law etc.)**
 - **Available in all languages**
- Implementation report of the Enforcement Directive on Posting adopted on 25/09

Directive 2014/67/EU

Main provisions

- Criteria to determine genuine posting
- Improved access to information – single official national websites
- Improved administrative cooperation
- Administrative requirements and control measures
- Subcontracting liability
- Cross-border enforcement of financial administrative penalties or fines

Implementation Report

- Art 24: review the application and implementation of the Directive
- Propose, where appropriate, the necessary amendments
- Certain Articles that should be assessed (Art 4, 6, 9, 12, Chapter VI, adequacy of data and bilateral arrangements)
- Report looks also at other provisions
- As far as possible the effectiveness in practice of the measures taken by MS is reflected upon

Implementation Report

- *Implementation Report*
- *Staff Working Document with IV Annexes:*
 - **Annex I: MS transposition measures of Art 9**
 - **Annex II: MS transposition measures of Art 12**
 - **Annex III: IMI statistics on the use of the posting module**
 - **Annex IV: Report on collection of data from national declaration tools for the year 2017**

Implementation report conclusions 1

- No amendment to the directive is considered necessary
- Transposition has improved the enforcement of posting rules in MS
- Administrative cooperation has improved, but can be facilitated further, in particular through ELA
- Administrative and control measures have improved enforcement, but can be simplified in order to reduce administrative burden

Implementation report conclusions 2

- *COM will continue working with the MS to ensure that the Directive continues to be correctly transposed and applied.*
- *to ensure a greater coherence in the interpretation and application of the posting rules throughout the EU, COM has also published the Practical Guide on Posting*
- *COM will also continue to provide support, together with the ELA, to all actors involved.*

Thank you!

MoveS

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

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

Network structure and organisation

MoveS

Project Director

Harald Hauben

EFTHEIA

Coordinator

Grega Strban

University of Ljubljana

Assistant Coordinator

Elisa Giacumacatos EFTHEIA

Inge Vandenbulcke EFTHEIA

Steering Group Members

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

POOL OF NATIONAL EXPERTS
POOL OF ANALYTICAL EXPERTS

Objective 1

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

Legal Reports (2020)

▪ Social Security Coordination

- Coordination of long-term care benefits in the Member States and eventual consequences of the revision of the social security coordination rules
- Coordination of unemployment benefits for unemployed persons who resided in a Member State other than the competent Member State, and eventual consequences of the revision of the social security coordination rules

▪ Free movement of workers

- Legal status and rights of the family members of EU mobile workers

Flash Report

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

Ad hoc support

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

Objective 2

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

Seminars

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

2020 MoveS draft seminar calendar

Date	Country
23/01	Latvia
27/02	Poland
31/03	Portugal
24/04	France
20/05	Bulgaria
03/06	Slovakia
September	Norway
28/10	Hungary
06/11	Switzerland
1/12	Italy

Cooperation and networking

- **MoveS webpage (EUROPA)**

[http://ec.europa.eu/social/main.jsp?langId=en
&catId=1098](http://ec.europa.eu/social/main.jsp?langId=en&catId=1098)

- **MoveS LinkedIn group:**

MoveS – free movement and social security coordination

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

Thank you for your attention!

Contact us at:

MoveS@eftheia.eu



Valsts sociālās
apdrošināšanas
aģentūra

Ģimenes pabalstu koordinācija ES – Latvijas pieredze

Iveta Gintere
Valsts sociālās apdrošināšanas aģentūras
Pabalstu metodiskās vadības daļas
Vecākā eksperte

MoveS seminārs
Rīga, 23.01.2020.



Valsts sociālās
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aģentūra

Tiesību noteikšana uz ģimenes pabalstiem

- Regula Nr.883/2004 “Par sociālās nodrošināšanas sistēmu koordinēšanu”
- Regula Nr. 987/2009
- +
- Nacionālie tiesību akti
- +
- 08.05.2014. Eiropas Savienības tiesas spriedums lietā C – 347/12 (Ulrike Wiering un Markus Wiering pret Luksemburgas valsts ģimenes pabalstu kasi).



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Ģimenes pabalstu definīcija

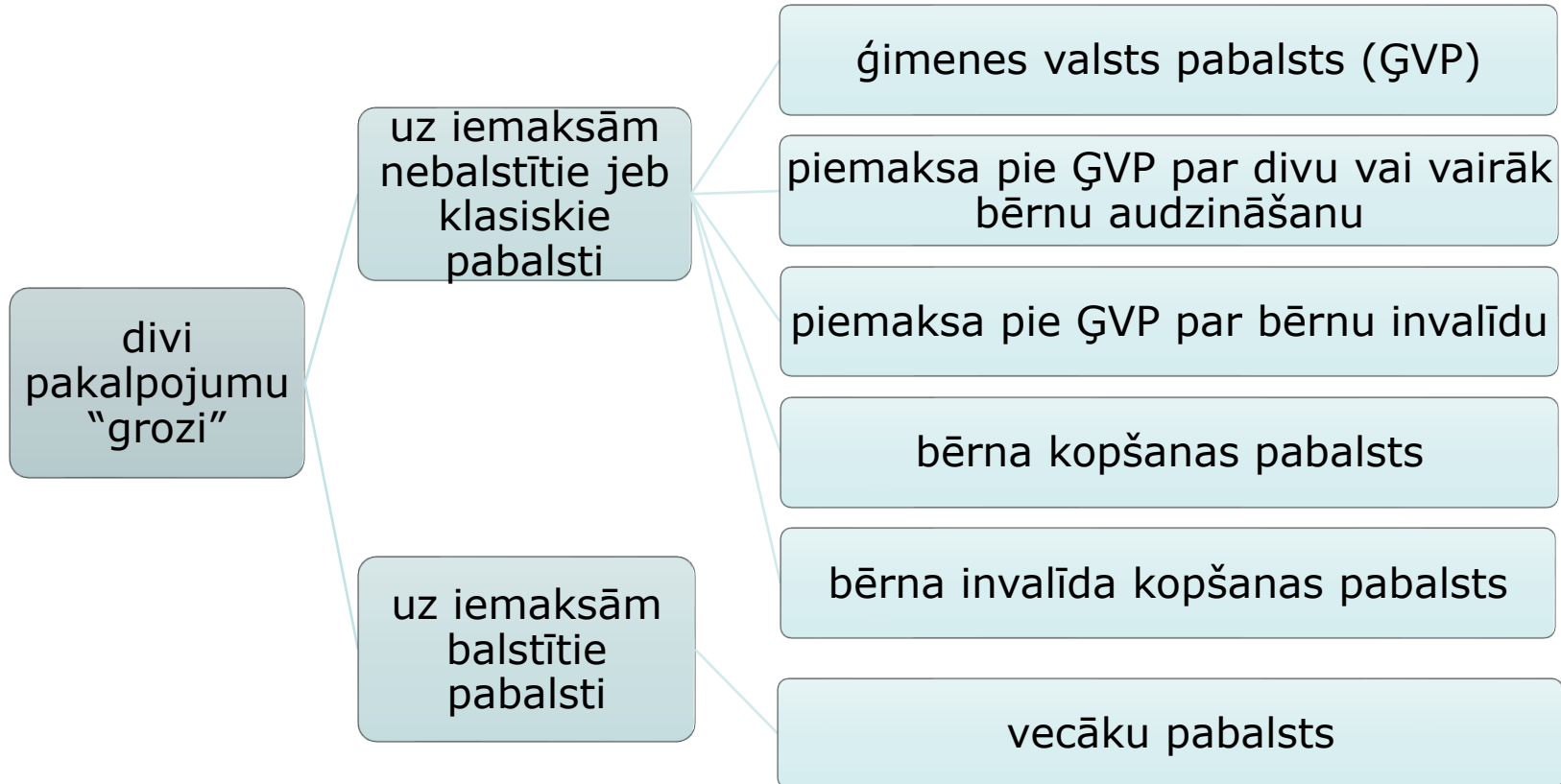
Saskaņā ar Regulas Nr. 883/2004 1.panta 3.punkta z)
apakšpunktā noteikto:

"ģimenes pabalsti" ir visi pabalsti natūrā vai naudā, kas paredzēti, lai segtu ģimenes izdevumus, izņemot I pielikumā minēto uzturēšanas maksājumu un īpašo bērna piedzimšanas un adoptēšanas pabalstu avansus.



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No VSAA sniegtajiem pakalpojumiem ģimenes pabalsti Regulas izpratnē ir:





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Nosacījumi ģimenes pabalstu saņemšanai

Nacionālie tiesību akti

➤ paredz tiesības uz pakalpojumu Latvijā, ja pakalpojuma saņēmējs un bērns, par kuru tiek saņemts pabalsts, pastāvīgi dzīvo Latvijas teritorijā.

ES tiesību akti

➤ paredz tiesības uz pakalpojumu ņemot vērā visas ģimenes (t.sk. abu vecāku) dzīvesvietas un nodarbinātības apstākļus. Izvērtējot tiesības tiek ņemtas vērā sekojošas prioritātes:

- pirmkārt, nodarbinātība (t.sk. pašnodarbinātība, bezdarbnieka / slimības / maternitātes / vecāku pabalsta saņemšana);
- otrkārt, pensijas saņemšana;
- treškārt, dzīvesvieta.

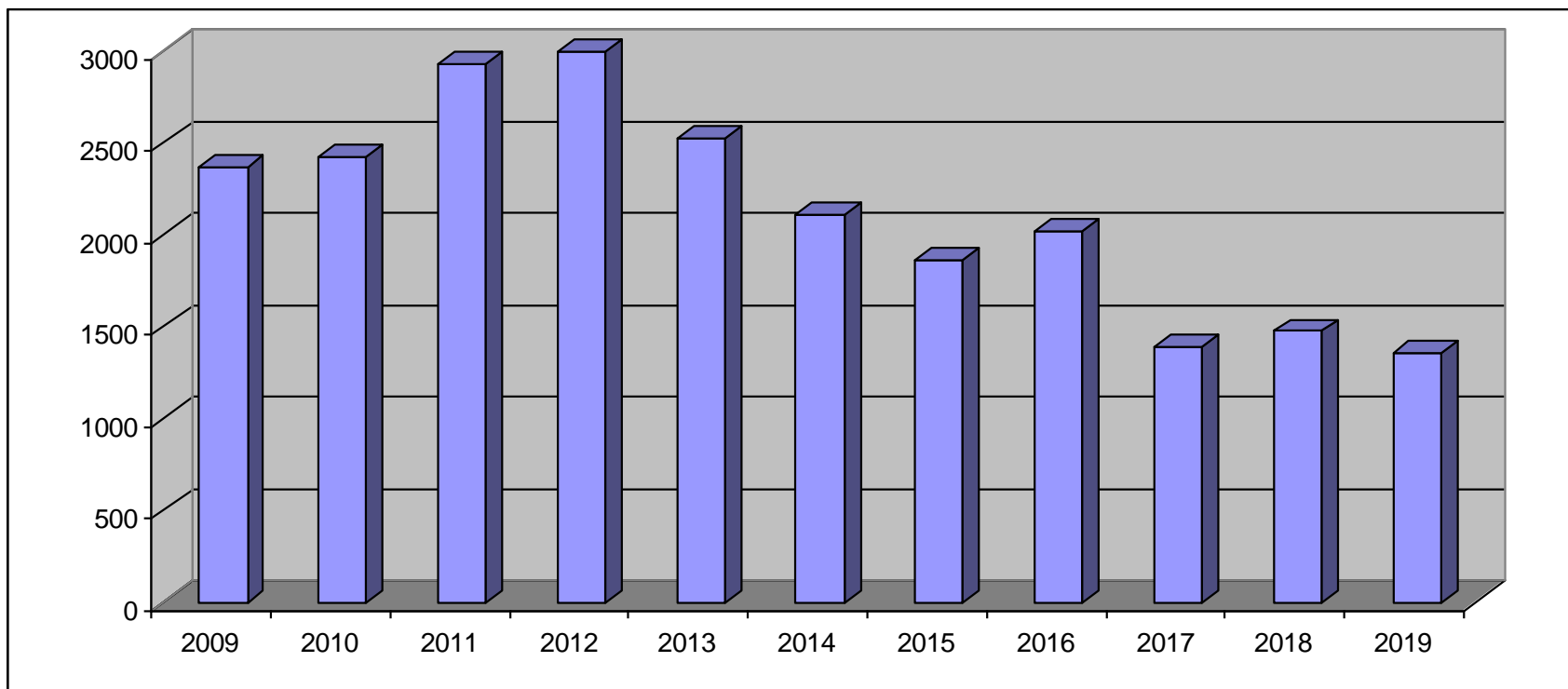


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Statistika

Kopš Latvijas iestāšanās ES (t.i. 01.05.2004.), VSAA Starptautisko pakalpojumu nodaļā saņemta un sniegta informācija citām ES dalībvalstīm par aptuveni **28 200** ģimenēm.

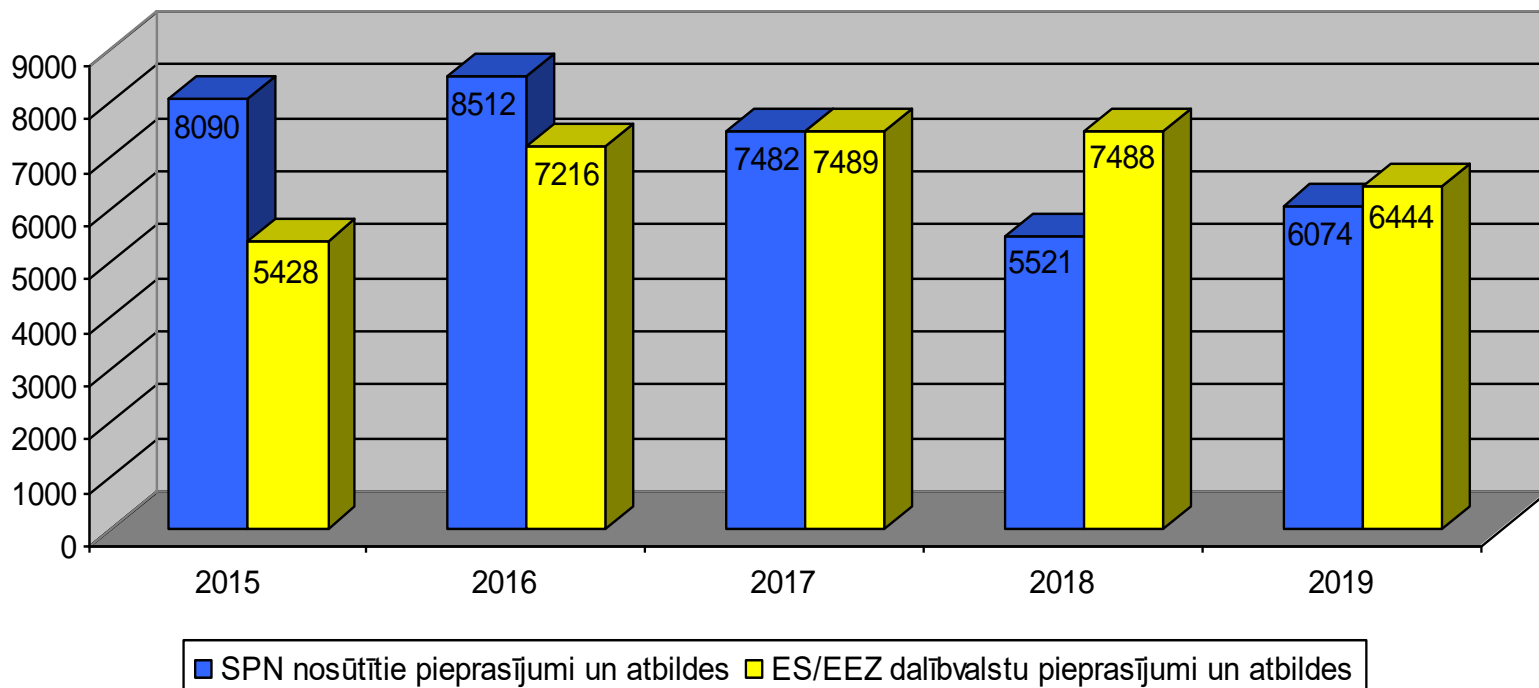
Jauno lietu skaits





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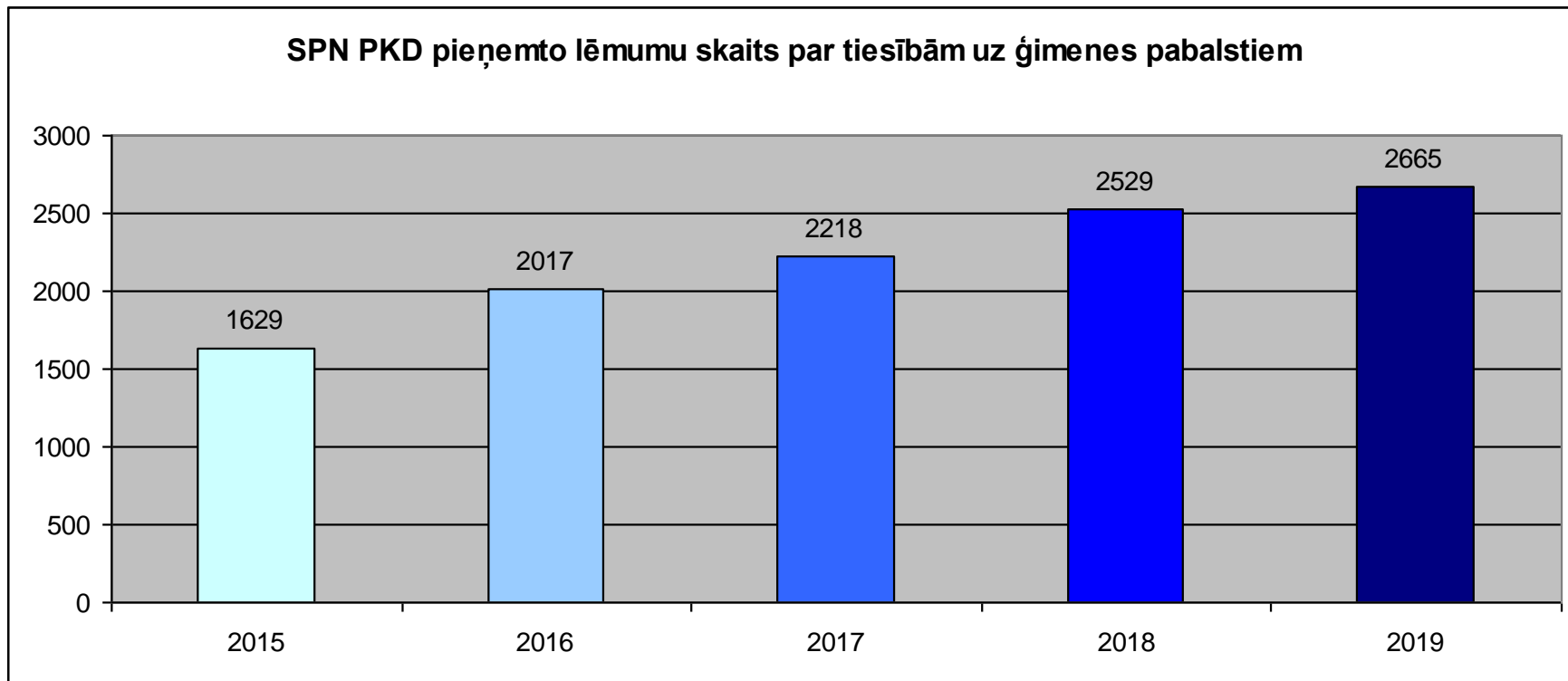
Informācijas apmaiņa ar ES/EEZ dalībvalstīm





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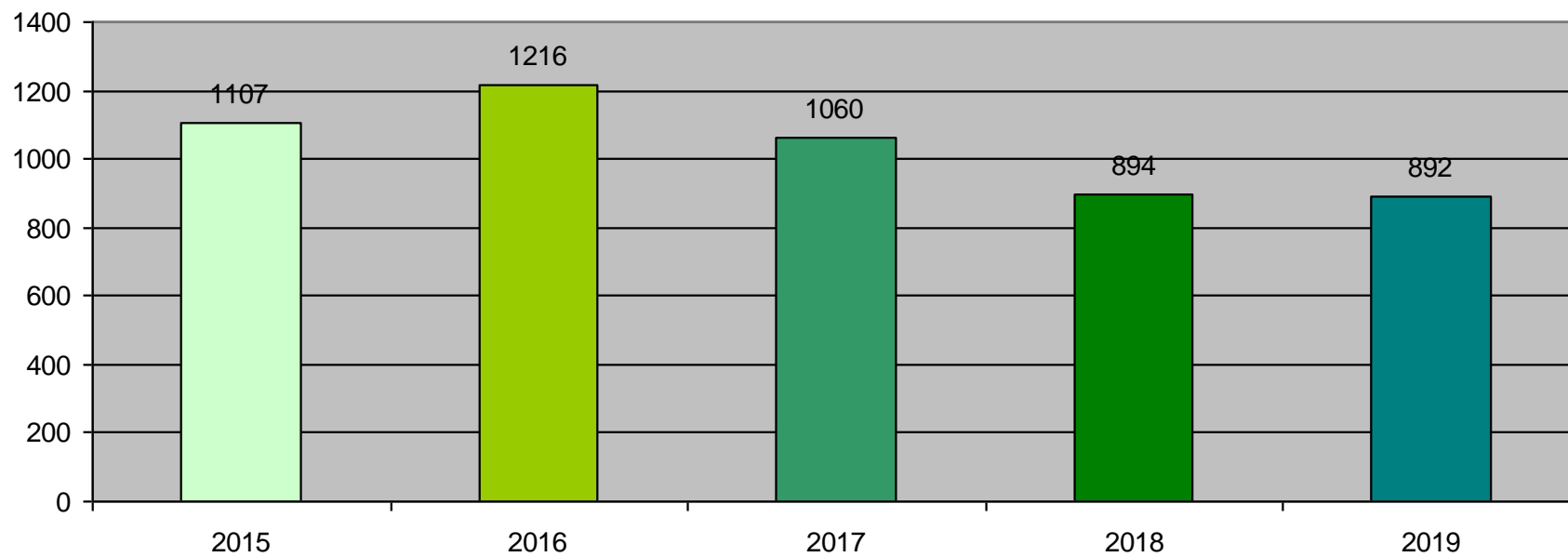
SPN PKD pieņemto lēmumu skaits par tiesībām uz ģimenes pabalstiem





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Pārmaksāto pakalpojumu skaits

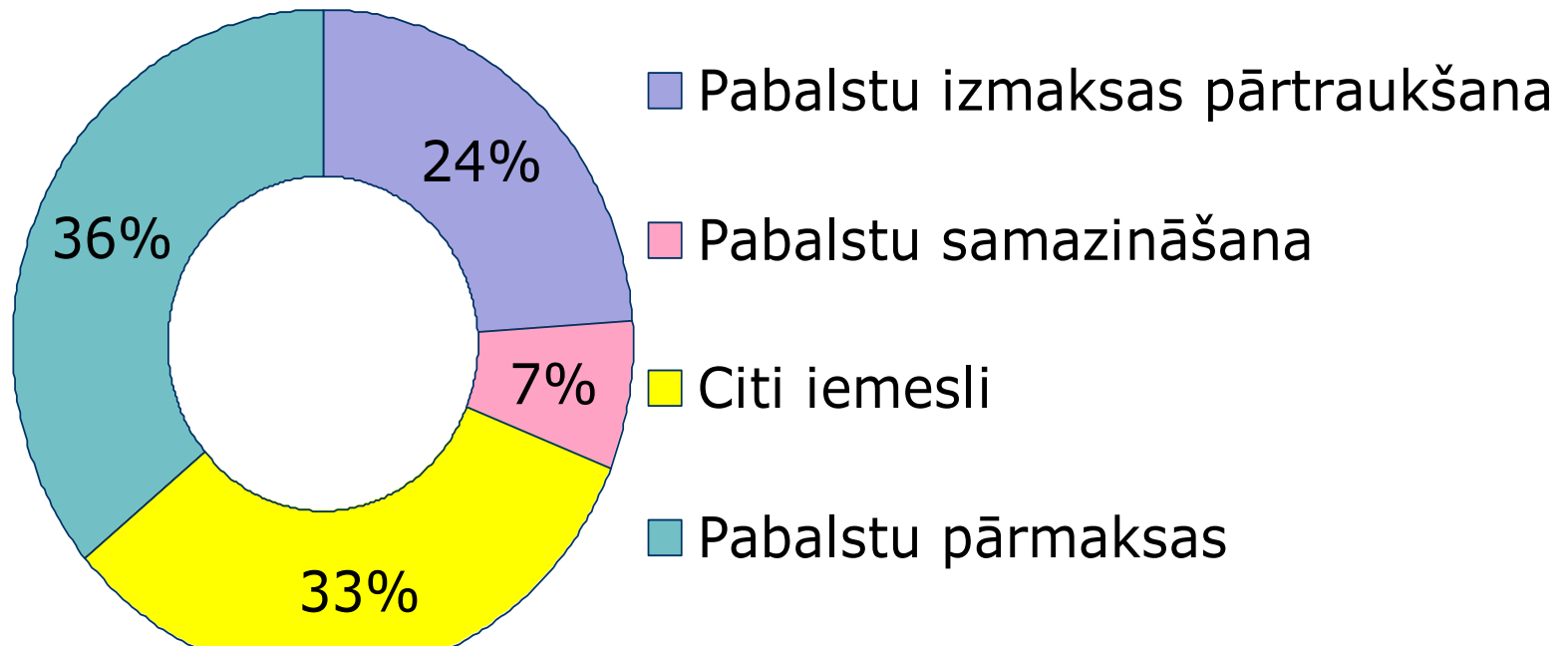




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Pārsūdzības ES lietās

2019. gadā pārsūdzēti aptuveni **2%** pieņemto lēmumu:



45% gadījumu pieņemtie lēmumi tika atcelti (t.sk. Administratīvā procesa likuma 77. ¹ panta ietvaros).



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Tiesu spriedumi 2019. gadā

- Administratīvās apgabaltiesas 2019. gada 27. jūnija spriedums lietā Nr.A420264017 - par ģimenes pabalstu pārmaksu sakarā ar ģimenes uzturēšanos Vācijā;
- Administratīvās apgabaltiesas 2019. gada 21. februāra spriedums lietā Nr.A420241617 - par pabalstiem, kas ņemti vērā veicot salīdzināšanu sekundārās kompetences gadījumā.



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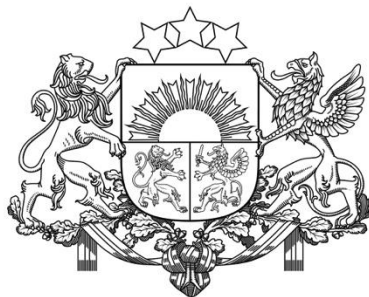
Problēmas un izaicinājumi

- pastāvīgās dzīvesvietas noteikšana;
- tiesību noteikšana gadījumos, kad kāds no vecākiem ir vienlaicīgi nodarbināts un sociāli apdrošināts divās vai vairāk valstīs;
- provizoriski izmaksāto pabalstu pārmaksu atgūšana (uz 01.01.2020. - 127 provizoriskās pārmaksas par kopējo summu 89 324,37 EUR, nosūtīti 88 pieprasījumi pēc atmaksas kompetentajām iestādēm, līdz šim jau saņemti 29 atteikumi no valstīm);
- EESSI jeb elektroniska informācijas apmaiņa sociālās drošības jautājumos starp ES/EEZ dalībvalstīm – Latvija plāno pievienoties 2020. gada aprīlī.



Valsts sociālās
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Paldies par uzmanību!



Labklājības ministrija

Darbinieku nosūtīšana

2020.gada 23.janvāris

Ineta Vjakse
Labklājības ministrijas
Darba attiecību un darba aizsardzības politikas departamenta
direktora vietniece



Labklājības ministrija

Juridiskais ietvars

- Eiropas Parlamenta un Padomes 1996.gada 16.decembra direktīva 96/71/EK par darba ņēmēju norīkošanu darbā pakalpojumu sniegšanai
- Eiropas Parlamenta un Padomes 2014.gada 15.maija direktīva 2014/67/ES par to, kā izpildīt direktīvu 96/71/EK par darba ņēmēju norīkošanu darbā pakalpojumu sniegšanas jomā, un ar ko groza Eiropas Parlamenta un Padomes regulu (ES) Nr.1024/2011 par administratīvo sadarbību, izmantojot Iekšējā tirgus informācijas sistēmu («IMI regula»)
- Eiropas Parlamenta un Padomes 2018.gada 28.jūnija direktīva 2018/957, ar ko groza Direktīvu 96/71/EK par darba ņēmēju norīkošanu darbā pakalpojumu sniegšanas jomā



Labklājības ministrija

Direktīva 2018/957

Mērķis:

veicināt pakalpojumu sniegšanas brīvību godīgas konkurences apstākļos un ievērot darba ņēmēju tiesības, piemērojoties jauniem ekonomikas un darba tirgus apstākļiem, kā arī nodrošināt norīkotajiem darba ņēmējiem taisnīgus samaksas nosacījumus un vienlīdzīgus konkurences apstākļus starp norīkojošajiem uzņēmumiem un vietējiem uzņēmumiem uzņēmējvalstī.

Pārņemšana:

2020.gada 30.jūlijs



Labklājības ministrija

Galvenās izmaiņas saistībā ar direktīvu 2018/957 (1)

- Stingrāks regulējums attiecībā uz pagaidu darba un darbā iekārtošanas aģentūrām:
 - jānodrošina darbiniekam tādi paši darba apstākļi un nodarbinātības noteikumi, kādus piemērotu, ja darba attiecības būtu tieši nodibinātas starp darbinieku un pakalpojuma saņēmēju Latvijā;
 - ja pakalpojuma saņēmējs nosūta darbinieku uz citu valsti, ir jāinformē aģentūra par nosūtīšanu, lai aģentūra izpildītu visus pienākumus;
 - ja notiek tālāka darbinieka nosūtīšana (ķēde), pagaidu darba aģentūra, kas sākotnēji nosūtījusi darbinieku, ir darba devējs.



Labklājības ministrija

Galvenās izmaiņas saistībā ar direktīvu 2018/957 (2)

- Ilgtermiņa nosūtīšana:
 - ja faktiskais nosūtījums pārsniedz 12 mēnešus, tad nosūtītajiem darbiniekiem piemēro tos nodarbinātības noteikumus, kas piemērojami “vietējiem darbiniekiem”, izņemot darba līguma noslēgšanas un izbeigšanas noteikumus, konkurences aizlieguma klauzulas un papildu arodpensiju shēmas;
 - termiņu var pagarināt līdz 18 mēnešiem, iesniedzot Valsts darba inspekcijai motivētu paziņojumu.
- Darbinieku aizstāšana:
 - ja vienu darbinieku darba devējs aizstāj ar citu darbinieku, kas veic tajā pašā vietā tos pašus pienākumus, tad nosūtīšanas ilgums ir attiecīgo atsevišķo norīkojumu kumulatīvais ilgums.



Labklājības ministrija

Galvenās izmaiņas saistībā ar direktīvu 2018/957 (3)

- Papildus noteikumi:

Papildināts to noteikumu uzskaitījums, kas attiecināmi uz nosūtīto darbinieku: ne tikai par darba un atpūtas laiku, darba samaksu u.c., bet arī noteikumi par izmitināšanu, ja vien darba devējs tādu pakalpojumu nodrošina, kā arī noteikumus par izdevumu atlīdzināšanu saistībā ar komandējumu vai darba braucienu Latvijā.

- Darba samaksa:
 - visu obligāto darba samaksas elementu (darba samaksa, piemaksas par virsstundu, nakts, papildus darbu, kā arī darbu svētku dienās) piemērošana nosūtītajiem darbiniekiem (“minimālās algas likmes” vietā).
- Dalībvalstu pienākumi attiecībā uz informācijas aktualizēšanu, sadarbību, sodiem.



Labklājības ministrija

Informācijas piemērojamiem noteikumiem

- Informācija par Latvijā piemērojamiem noteikumiem:
latviski: <http://www.lm.gov.lv/text/3385>
angliski: <http://www.lm.gov.lv/text/3413>
- Informācija par citu valstu kompetentajām un sakaru iestādēm:
<http://ec.europa.eu/social/main.jsp?catId=726&langId=en>
- Citu valstu vienotās tīmekļa vietnes atrodamas:
https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index_en.htm#national-websites



Labklājības ministrija

Paldies par uzmanību!

www.lm.gov.lv

Family and family benefits in the EU

Prof. dr. Grega Strban

Coordination of family benefits and posting of workers in the context of free movement in the EU,
MoveS seminar Latvia, European Union House, Riga 23.1.2020

Introductory remarks



- Social risks related to family
 - *maternity/paternity, family*
 - *sickness, decease, long-term care*
- Hence, it is essential to define ,family`
 - *relying on national definitions*
 - *very distinctive*

Introductory remarks



- Three assumptions of social security
 - *Standard Beneficiary according to ILO C 102*
- Assumptions are no longer valid
 - *non-standard (organisation of work)*
 - *dual earner model*
 - *way of living and family composition*
- Perception of family (members) varies in time and place...

National diversities



- Less ,traditional` forms of family
 - *adoptive and foster families,*
 - *families with same-sex spouses/parents,*
 - *single-parent or lone-parent families, and*
 - *reconstituted families (blended, step-, patchwork or recomposed families)*
- General (family law) or specific (social security) definitions?

National diversities



- Can a child have two or more ‚fathers‘ or ‚mothers‘ for social security purposes?
 - ‚father plus‘
 - ‚co-mothership‘
- Important role of the judiciary...

- Coordination of social security systems
 - *Purpose and principles...*
 - *Paradox of a Regulation?*
- Also (partial) harmonisation of concepts?
 - *Coordination Regulations*
 - *Other legal instruments*

Social security coordination



- **Sickness benefits in kind (healthcare)**
 - *Family members according to the MS of resid.*
 - *Recognising same-sex partners (paying MS not)?*
 - *Not recognising same-sex partners (paying MS does)?*
- **Sickness cash benefit**
 - *E.g. caring for a sick child in another MS?*

Social security coordination



- Maternity/paternity benefits
 - *Definitions*
 - *Not always clear distinction towards FB*
- Old-age benefits
 - *Child raising periods*
 - *Lowering of age or higher pension calculation due to ,children'*

Social security coordination



- Family benefits
 - A plethora of benefits
 - Who is entitled?
 - *entitling person*
 - *entitled person*
 - *receiving person*

(CJEU Slanina) ...

Social security coordination



- Equal treatment and family benefits
 - *Nationality or residence conditions*
 - *Legal fiction - family members residing with the entitled person*
 - *Where is residence?*
 - *CJEU decisions*

Social security coordination



- Determining the applicable legislation
 - *Purpose of only one MS being competent*
 - *Deviating from the general principle*
 - *CJEU cases (Bosmann, Hudziński and Wawrzyniak...)*
 - *Two MS may be competent*
 - *Anti-overlapping rules for benefits of the same kind*
 - *Which family benefits are of the same kind?*
(CJEU Wiering)
 - *Proposal for amending the Regulation (EC) 883/2004*

Social security coordination



- Export of (un)adjusted family benefits?
 - *Export – a misleading notion?*
 - *Export is being contested by some MS*
 - *„Brexit“ agreement (Annex V) – indexation of FB*
 - *The idea has a life of its own...*
 - *Two-way indexation? Optional? Only reduction? (AT case)*

Concluding thoughts



- Should the diversities be ,exported`, otherwise against:
 - *Equal treatment (of facts and events)?*
 - *Freedom of movement?*

Concluding thoughts



- Possible solutions
 - Interpretative tools
 - *Dynamic interpretation ('spouse' or 'child')*
 - *Equal treatment of facts*
 - *Non-discrimination based on sexual orientation*
 - Amendments to the Regulation 883/2004
 - Common (restricted or broad) EU-wide definition of a family and the members of a family
 - Obligation of the EU

Social security coordination and atypical work

Prof. dr. Paul Schoukens
KU Leuven – Tilburg University

Overview



- A-‘typical’ work? (Non-standard work and self-employment)
- Atypical work and access to social security?
- Atypical work and ‘employed’ or ‘self-employed’ activities?
- Atypical work and indicating the competent state (Title II)
- Atypical work and other co-ordination principles (equal treatment)
- Alternative coordination?

-Social Security coordination and non-standard forms of employment: interrelation, challenges and prospects - MoveS Analytical Report 2018 (Strban, Carrascosa Bermejo, Vukorepa and Schoukens)

-"The changing concept of work: when does typical work become atypical?", *European Labour Law Journal*, 2017, Issue 4, 1-28 (Barrio and Schoukens)



Deloitte.



Funded by the



WHAT IS TYPICAL WORK?

- Typical as ‘most common’
61% of the workforce in the EU is in indefinite full-time employment.
- Typical as the ‘**regulatory standard**’

The «STABLE, OPEN-ENDED AND DIRECT EMPLOYMENT RELATIONSHIP BETWEEN A DEPENDENT, FULL-TIME EMPLOYEE AND HIS UNITARY EMPLOYER» (WALTON, 2016) became the **standard** for the regulation of the male labour market during Fordism because:

- It provided a secured pool of middle-skilled workers.
- It provided the income security needed for developing consumerism and the welfare State.

TYPICAL WORK: THE MEANING OF A STANDARD - II

INTERNAL CHALLENGES TO THE STANDARD EMPLOYMENT RELATIONSHIP

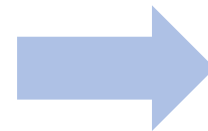
EMPLOYMENT RELATIONSHIP

- Personal subordination
- Bilateral character
- Salary
- Economic dependency
- Mutuality of obligations
- Work usually performed at the employer's premises

STANDARD
EMPLOYMENT

LABOUR STABILITY

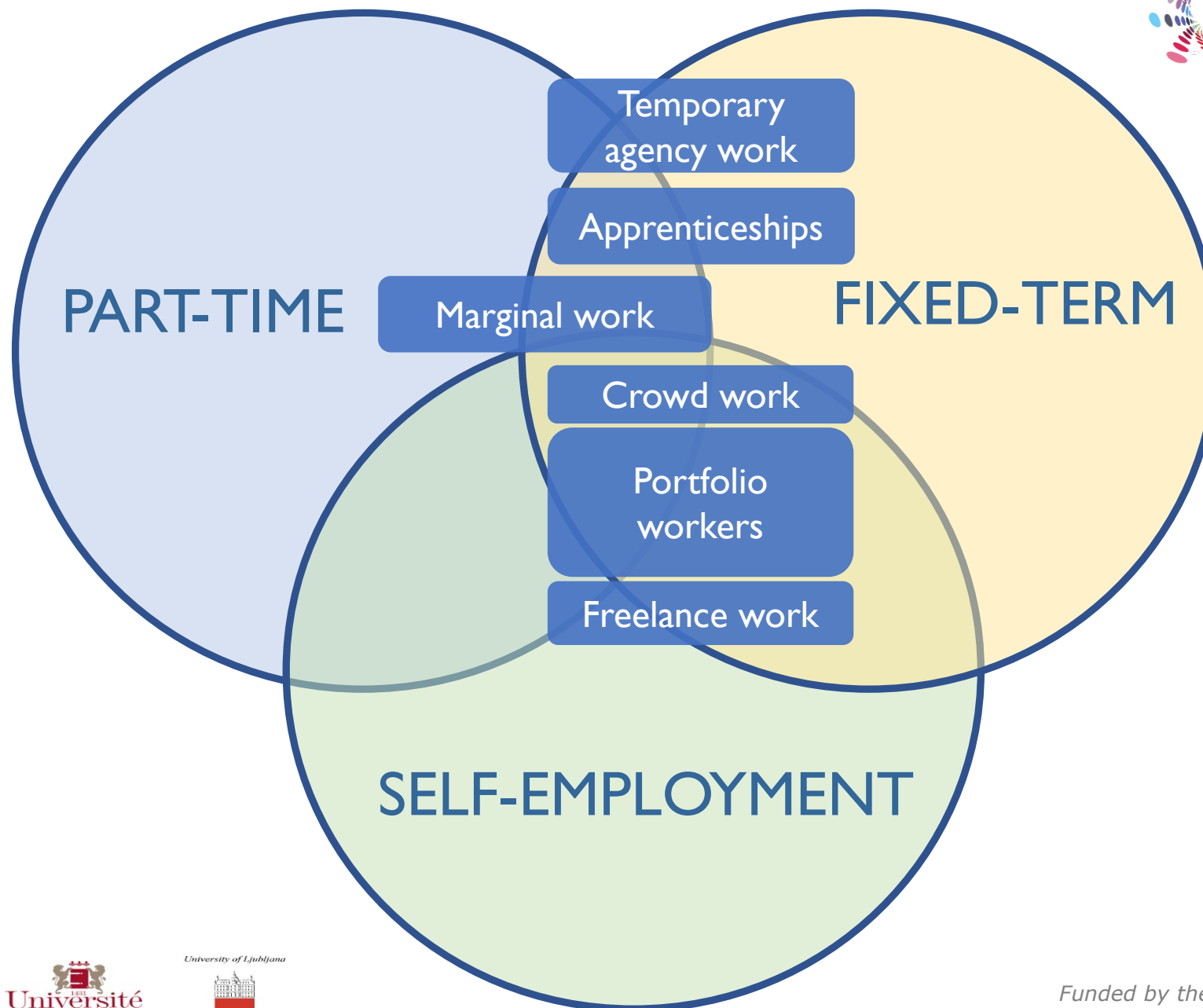
- Indefinite duration
- Full-time



INCOME SECURITY

- Salary which is sufficient to ensure livelihood
- Expectation of an adequate level of social insurance

EXTERNAL CHALLENGES TO THE STANDARD EMPLOYMENT RELATIONSHIP



Atypical work and access social security



National classification of atypical workers

- Labour law definition, (not always) followed for social security purposes
 - Legal subordination / economic dependency
- Employees, self-employed persons or in-between category
 - In-between: (partial) assimilation in Ee-system >< system on its own
- Certain types atypical work are not envisaged or accepted in some MS
- Classification is not always clear (case by case) or can differ from one MS to another (in-between)

Insurance as employee

- In principle, comprehensive coverage
- Exceptions: salary or working hours thresholds limit/exempt coverage
 - ✓ Salary thresholds: e.g. Germany, Austria, etc.
 - ✓ Working hours thresholds: e.g. Malta and Finland



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Atypical work and access social security (II)



Insurance as self-employed person

- General or special scheme but often less developed coverage:
 - ✓ Voluntary, opt out option or excluded insurance against certain risks
 - ✓ Also issue income thresholds: Finland, Ireland, Malta, B, FR,....
 - ✓ Exempting insurance
 - ✓ Reducing insurance
 - ✓ Minimum income threshold as element for definition 'activity'
 - ✓ What is 'work', 'professional activity'?
 - ✓ New qualification problem

Insurance as Ee or as SE, yet not 'working' (professionally active)

- ✓ Volunteer, interns, ...
- ✓ Access to profession as formal requirement

Employed or self-employed activities



- 'Worker' autonomous concept specific to EU law
- Distinction in EU law between on the one hand the labour law or free movement definition of a worker, and on the other hand the social security law definition
 - Article 45 TFEU (Lawrie-Blum C-53/81 and ff)
 - For and under the direction of another person
 - In exchange for remuneration
 - Not marginal/ancillary → towards minimum level of income?
 - Regulation (EC) No 883/2004 refers to national law when "activity as an employed person" has to be determined
 - Can be 'marginal' (Kits van Heijningen C-2/89)
- Concept not (anymore) important for personal scope Reg. 883/2004
- But still relevant for coordination rules that are differently designed for employees and self-employed persons // workers – non-workers
 - E.g. Title II

Applicable law (Title II)



Diverse national classification of atypical workers → consequence classification Reg.?

- Different classification: WE activity > SE activity (art. 13 par 3 Reg 883/2004)
- When does activity turn into professional activity (beyond marginal nature) and who decides on this? *Zinnecker- De Jaeck/Hervein* logic? Quid multiple activities?
- Increase in number/variety of non-standard workers and “in-between” situations
 - “In-between”: activity as employed or as self-employed for Reg. 883/2004?
 - National law? Cfr Italian INPS-circular note (2009-2018) on ‘Co.Co.Co.’ = WE (common European criteria?)
 - Cfr. Case law from era when SE did not belong to scope coordination Reg.
 - Unger (C-75/63), de Cicco (C-19/68), Janssen (C-23/71), Brack (C-17/76), Walsh (C-143/79), Van Roosmalen (C-75/63),...

Digital /virtual workers

- Applicable legislation rules (*lex loci laboris*) are very ‘physical’
- How do these rules apply to virtual work (platform work/telework/...)?
 - ✓ Action connected with the work activity (*Partena* C-137/11)
 - ✓ Marginal partial teleworking at home (*X vs SvF* C-570/15)

Applicable law (Title II)



Other (potential) problems

- Marginal activities in various Member States
 - EU Reg 883/2004
 - See national qualification
 - Increasing use of thresholds (diverse across MS!) → increase number of marginal 'non-workers' (use Lex loci domicilii)?
 - Marginal >< substantial activities
 - 5% rule – even though of professional nature → coordination rules do not give effect (Art. 14(5)(b) Reg 987/2009 / X vs SvF C-570/15 / interpretation Adm Comm) → only for simultaneous activities?
 - 25% rule – simultaneous activity – if marginal → not relevant indicating competent state (residence)
 - Marginal work = irregular regarding work time / income patterns → calculate %?
- Posting
- Potential impact *Bosmann C-352/06 and Franzen C-382/13* → due to logics 'Petroni' principle → neutralizing exclusive effect Title II
 - 'better' protection national law (residence) than that provided under EU Reg (*lex loci laboris*)
 - *However: C-95/18 van den Berg and Giessen – Franzen II*
 - Coordination at its limits when faced with systems of too different protection level
- Voluntary insurance: art. 14 Reg. 883/2004 → voluntary < mandatory

Free movement and equality of treatment



The atypical worker is considered to be a worker

- Migrant or frontier worker enjoys less benefits than in MS of origin
- It could discourage mobility.

The atypical worker is not considered to be a worker

- If the person is considered to be a **jobseeker**
 - ✓ Only entitled to benefits facilitating access to the job market
 - ✓ Jobseeker status requires clarification at an EU level
- If the person is considered to be **inactive** (marginal or ancillary activity)
 - ✓ Legal residence requirements may apply (resources & sickness insurance)
 - ✓ Eventual difficulties to access SNCB or even healthcare

Outlook



- Revival of the old idea of the Thirteenth state?
 - Working on the 'European territory'
- Adapted competent law rules for highly mobile workers (cfr. Research on mobility of researchers → principle of clicking one system)
- Digital social security for platform work (proposal E. Weber/ILO)



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Conclusions

- Atypical work → what is work?
 - New qualification issue?
- Too diverse social security systems → can you coordinate?
- Virtual mobility → calls for rethinking applicable law rules
 - The 'European' worker

Thank you

- Questions?



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Valsts sociālās
apdrošināšanas
aģentūra

A1 sertifikāts un piemērojamie tiesību akti: Latvijas pieredze

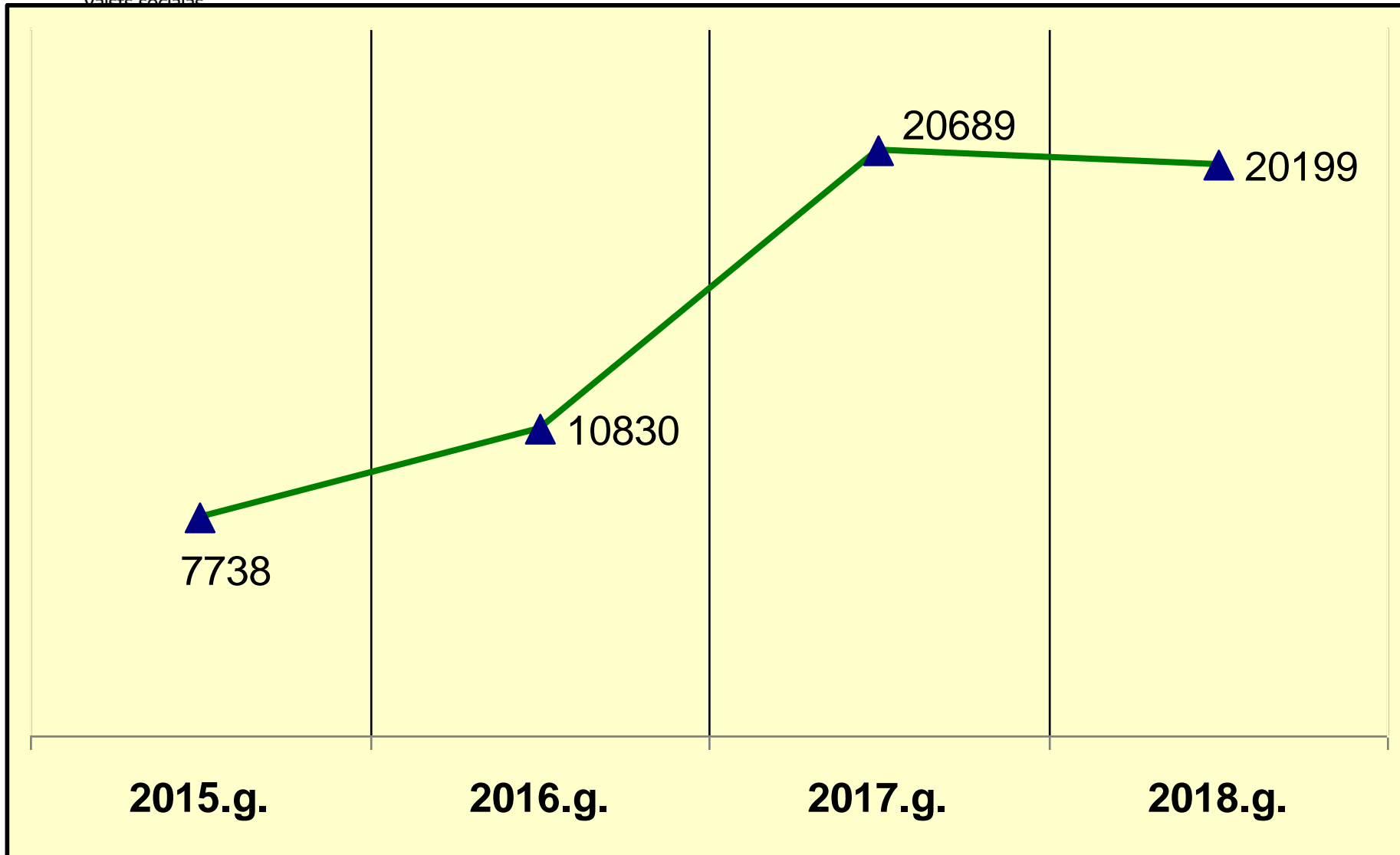
Iveta Suraka
VSAA

MoveS seminārs Latvijā, Rīga 23.01.2020.



Valsts sociālās

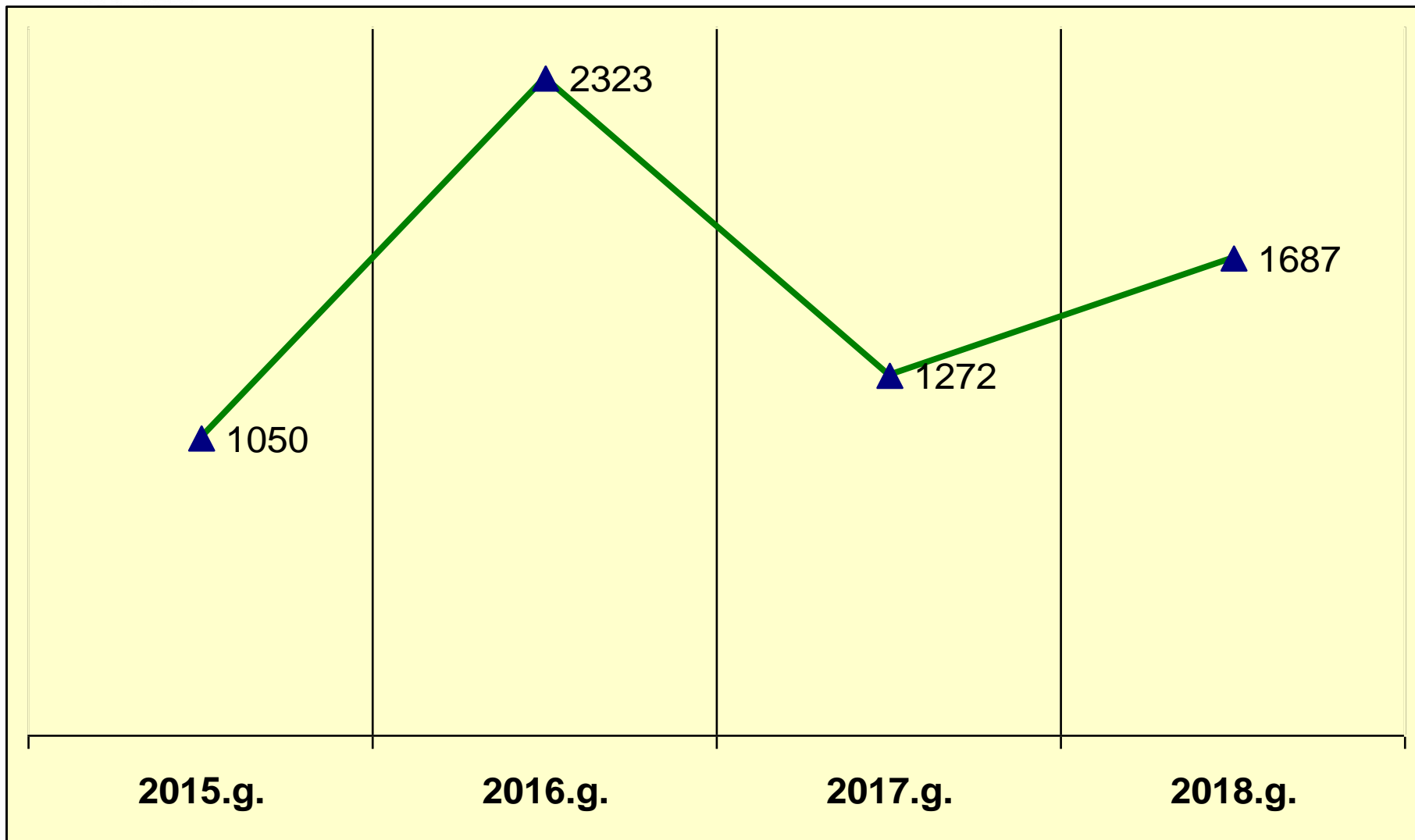
VSAA izdotie A1/PD A1 issued





Valsts sociālās

Saņemtie A1 no citām DV/ PD A1 received from other MS



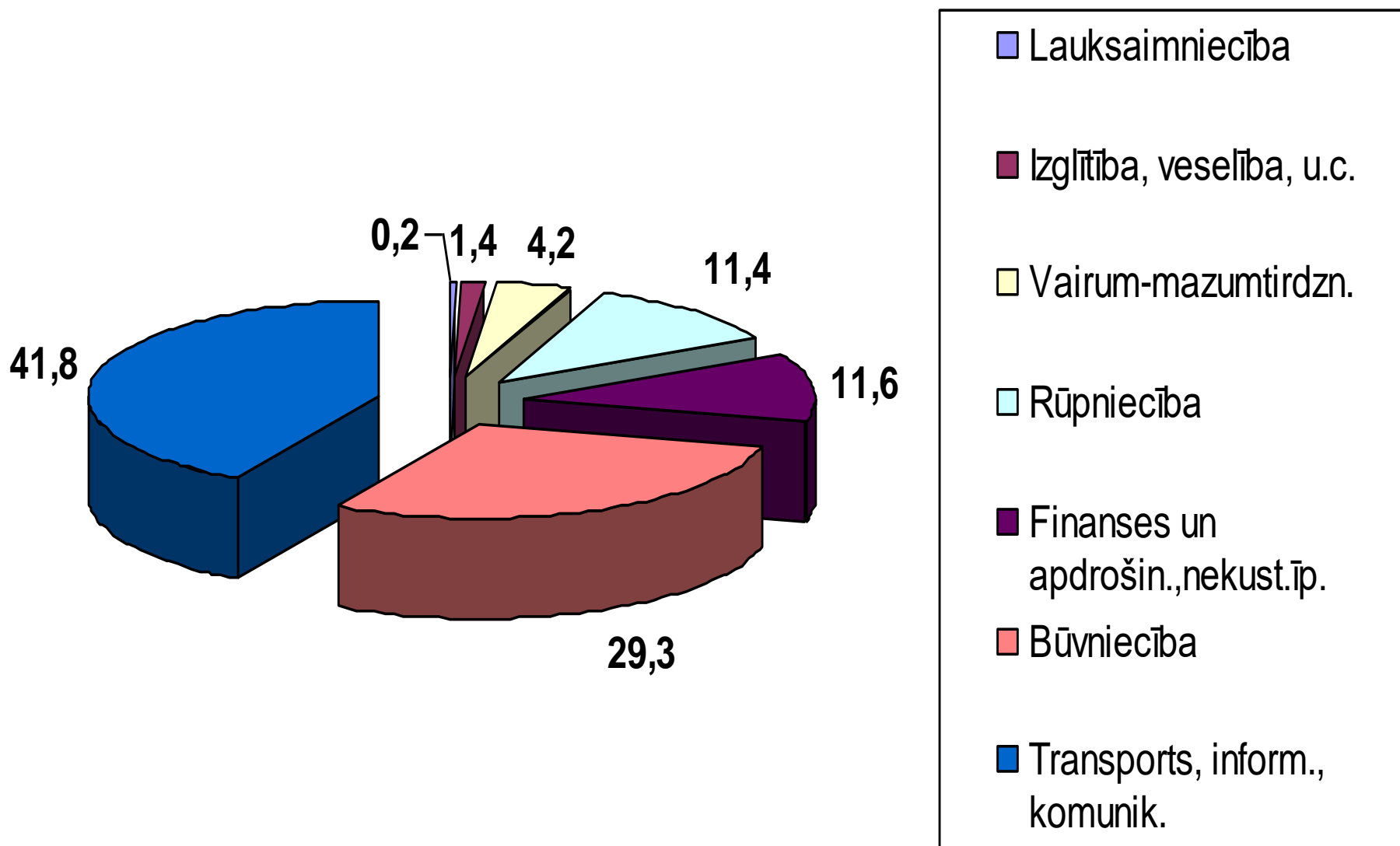


Valsts sociālās
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Izdotie A1/PD A1 issued (2018.)

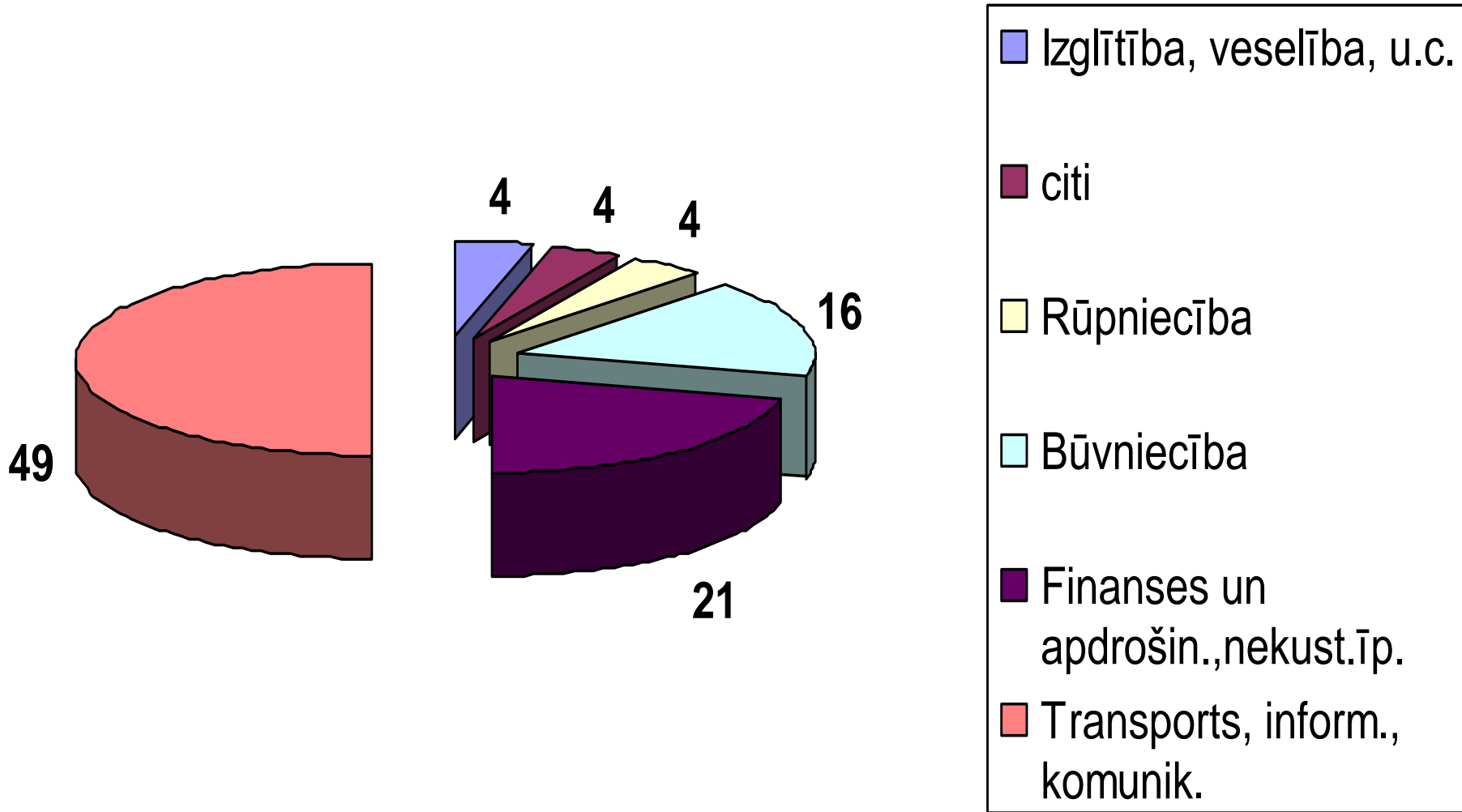
Kategorijas/Categories	izdotie/ issued A1	%
Nosūtītie darbinieki (12.pants)/Posted workers	833	4
Nod. vairākās DV (13.pants)/Employed in two or more MS	17311	86
Jūrnieki/Seafarers	743	4
Pašnodarbinātie/Self-employed	230	1
Citi/Others	1082	5
KOPĀ/TOTAL	20199	

Izdotie A1 13.pants/Issued PDA1 Article 13 (%)



Izdotie A1 12.pants/PD A1 Article 12

(%)





Valsts sociālās
apdrošināšanas
aģentūra

Problēmjasutājumi

1

Darbinieku no **trešajām valstīm** tiesību uz A1 noteikšana (uzturēšanās nosacījumu kontrole, saikne ar nosūtītājvalsti, viltus nodarbinātība, paverdzināšanas pazīmes u.c.)

2

Iemaksas vienlaicīgi veiktas divās DV vai nepareizajā DV (novēloti tiek noteikti piemērojamie tiesību akti un izdots A1)

3

Dažādās nodarbinātības formas un personu reģistrēšanās nodokļu maksāšanai

Lieta C-477/17

Raad van bestuur van de Sociale Verzekeringsbank **pret**
D. Balandin, I. Lukashenko, Holiday on Ice Services BV

(40) valstspiederīgajiem ir likumīgi jādzīvo kādas dalībvalsts teritorijā un tātad viņiem ir jābūt pagaidu vai pastāvīgām uzturēšanās tiesībām.

(41) valstspiederīgo uzturēšanās ilgums dalībvalsts teritorijā, ne tas, ka tie saglabā savu pastāvīgo interešu trešajā valstī, pats par sevi nav noteicošs, lai noteiktu, vai viņi "likumīgi dzīvo dalībvalsts teritorijā" Regulas Nr. 1231/2010 1. panta nozīmē.

EST nosprieda: Regulas Nr. 1231/2010 1. pants ir jāinterpretē tādējādi, ka tādi trešās valsts valstspiederīgie kā pamatlietā aplūkoti, kas uz laiku uzturas un strādā dažādās dalībvalstīs darba devēja labā, kurš ir reģistrēts dalībvalstī, var atsaukties uz koordinēšanas noteikumiem

Lieta C-437/18

*03.07.2018. Sąd Okręgowy w Gliwicach (Polija) lūdz sniegt prejudiciālu nolēmumu, – **Lebopoll Logistics Sp. z o.o.** w Sośnicowicach/Zakładowi Ubezpieczeń Społecznych Oddział w Zabrze*

Uzņēmums veic saimniecisko darbību starptautiskā transporta un kravu pārvadājumu jomā un pieņēmis darbā 40 Ukrainas pilsoņus.

Kā jāinterpretē Regulas 1231/2010 1.pantā noteiktais termins “dzīvesvieta”?

11.04.2019. lieta tika noņemta no EST reģistra, ņemot vērā Iesniedzējtiesas atsaukuma vēstuli pēc **Balandin** sprieduma



Valsts sociālās
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1

A1 darbiniekiem no trešajām valstīm

- Uzturēšanās nosacījumi: 90 dienas 180 dienu laikposmā
- Saikne ar nosūtītājvalsti/darba devēju
- Bezalgas atvaļinājumi, viltus nodarbinātība (?)
- Darbinieku darba un sadzīves apstākļi, paverdzināšanas pazīmes (!)

21.08.2019.Lībeka

Vācijas kompetento iestāžu (Muita, Finanšu kontrole nedeklarētā darba jautājumos, prokuratūra) un

Latvijas kompetento iestāžu (LM, VSAA) pārstāvju tikšanās





Iemaksu pārklāšanās

V.Z. Lieta

Latvijas pilsonis - no 2001.-2018.gadam iemaksas Latvijā un Lietuvā vienlaicīgi. Lietuvā divi darba devēji, no kuriem viens likvidēts 2010.gadā. Piemērojami LV tiesību akti

D.Ž. Lieta

Čehijas pilsonis - no 10.2018. – 01.2020. iemaksas Latvijā un Čehijā vienlaicīgi. Čehijas izsniegts A1 sertifikāts pēc 13.3.panta.Čehijā darba ņēmējs, LV - vajadzēja būt pašnodarbinātajam, bet tika reģistrēts d.ņ.statusā

H.H.Lieta

Latvijas pilsoņe no 2011. – 2017.gadam veica iemaksas Latvijā un Zviedrijā vienlaicīgi. Latvijā darba ņēmēja statusā, Zviedrijā – pašnodarbinātā. Darbs veikts tikai Zviedrijā. Latvijā bija piešķirta vecuma pensija. Piemērojami Zviedrijas tiesību akti



Valsts sociālās
apdrošināšanas
aģentūra

3

Nodarbinātības formas un nodokļu nomaksa

Lieta C – 631/17

SF pret ***Inspecteur van de Belastingdienst***

Latvijā dzīvojoša persona 2013.gadā bija darba attiecībās ar Nīderlandē reģistrētu uzņēmumu, strādāja par jūrnieku uz jūras kuģa, kas peld zem Bahamu salu karoga un darbu veica ārpus ES teritorijas. Strīds par 2013. gada iedzīvotāju ienākuma nodokli un sociālās apdrošināšanas iemaksu veikšanu

EST nosprieda: persona, kura, ir saglabājusi savu dzīvesvietu savā izcelsmes dalībvalstī, ietilpst Regulas 883/2004 piemērošanas jomā un tādējādi piemērojamie valsts tiesību akti ir šīs personas dzīvesvietas dalībvalsts tiesību akti



Valsts sociālās
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- Nepieciešams celt LV kontrolējošo iestāžu kapacitāti (VDI, VID, PMLP). Jāveido ciešāka sadarbība starp LV iestādēm
- Pasākumu kopums, kas vērsts uz darbinieku interešu aizstāvību. Regulas 883/2004 mērķis nav optimizēt darba devēju izmaksas
- Ciešāka un efektīvāka sadarbība, info apmaiņa starp DV iestādēm
- Eiropas Darba iestādes (ELA) loma



MoveS seminar Riga

23 January 2020

Recent developments at EU level on social security coordination

Axel SPECKER

European Commission, DG EMPL

Unit D2 – social security coordination



Overview

1. Revision of Regulations 883/2004 and 987/2009
2. European Labour Authority
3. Brexit
4. EESSI



Revision of the social security coordination Regulations





Main changes

- Applicable legislation
- Unemployment benefits
- Family benefits
- Long-term care
- Equal treatment
- Miscellaneous amendments



State of play – formal steps

- Commission proposal adopted in December 2016
- Provisional agreement achieved between the European Parliament, the Council and the European Commission (March 2019)

<https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf>

- No qualified majority in Council (March 2019) and postponement of first reading vote in European Parliament (April 2019)
- Decision to continue the file (October 2019) and resumption of trilogues



Provisional agreement: Applicable legislation

- Improved rules on cross-border cooperation (see next slides)
- Period of prior affiliation of 3 months
- Period of interruption of 2 months
- Replacement prohibition extended to self-employed persons
- Prior notification in all cases of sending in advance (except business trips)
- Criteria for location of registered office/place of business (Article 13)



Applicable legislation (i)

- Institutions need to carry out a proper assessment of the facts and confirm that the information in the PD A1 is correct



Applicable legislation (ii)

- Where not all sections indicated as compulsory are filled in, the institution of the Member State that receives the document shall without delay notify the issuing institution of the defect in the document.
- The issuing institution shall either rectify the document as soon possible or confirm that the conditions of issuing the document are not fulfilled.
- If the mandatory information missing is not provided within 30 working days the requesting institution may proceed as if the document had never been issued and shall in that case inform the issuing institution thereof



Applicable legislation (iii)

- Separate procedure for contesting the validity of a PD A1, including legally binding deadlines
- Where the issuing institution detects an error, it shall withdraw or rectify the PD A1 within 30 working days
- Where the issuing institution is unable to detect any error, it shall forward to the requesting institution all available evidence within 30 working days (10 days in urgent cases)
- Possibly further request and reconciliation by Administrative Commission



Applicable legislation (iv)

- General queries: Member States need to respond within 35 working days
- If a person pursues an activity without a PD A1, Member States can be requested information within 35 working days. If no information is provided, the person may be made provisionally subject to the legislation of the Member State of activity. If PD A1 is issued, it has retroactive effect



Provisional agreement: Unemployment benefits

- Aggregation: Minimum qualifying period of 1 month
- Export: Increase to a minimum of 6 months with possible extension to whole period of entitlement
- Frontier workers: Change of competence after 6 months of activity



Provisional agreement: Long-term care benefits

- Common definition of long-term care benefits
- Annex listing benefits in each Member State
- Member State of insurance will provide LTC benefits in cash and reimburse the cost of benefits in kind provided by the Member State of residence



Provisional agreement: Family benefits

- Distinction between family benefits intended to replace income due to child-raising (individual right), and all other family benefits
- Two calculations for differential supplement



Provisional agreement: Equal treatment

- Recital referring to CJEU judgments (Brey, Dano, Alimanovic, Garcia-Nieto, Commission v UK)



Provisional agreement: Miscellaneous amendments

- Procedures for recovery of unduly paid social security benefits aligned to Directive 2010/24/EU
- New legal basis to facilitate the identification of fraud and error by way of periodic exchange of personal data between Member States to facilitate data-matching



European Labour Authority





Legal basis

- Regulation 2019/1149
- Publication in OJ: 11 July 2019
- Entry into force: 31 July 2019



First steps

- ELA Establishment Group
- Interim Executive Director (and ongoing procedure to select the Executive Director)
- Management Board meetings on 16/17 October and 3 December 2019. Next meeting on 24 March
- Set-up of Working Groups for the tasks on Information and Inspections



Main activities

- Facilitating access to information on rights and obligations in cases of cross-border mobility for employees, employers and national administrations
- Supporting cooperation between Member States in cross-border enforcement of relevant Union law, including facilitating concerted and joint inspections
- Supporting cooperation between Member States in tackling undeclared work
- Supporting Member States authorities in resolving cross-border disputes



Impact on social security

- Social security included in the scope of ELA
- No transfer of Technical Commission, Audit Board, Conciliation Board
- For disputes related to social security, case may be referred to the Administrative Commission
- Administrative Commission may request ELA to transfer cases to it
- Cooperation Agreement to be concluded between ELA and Administrative Commission to set out work methods





Withdrawal Agreement

- On 25 November 2018, the European Council endorsed the WA agreed at negotiator's level and approved the Political Declaration
- On 17 October 2019, the European Council endorsed the revised WA and approved the revised Political Declaration
- Internal procedures for approval of revised WA are ongoing in EU and UK



Withdrawal Agreement

- Most likely WA will enter into force 1 February 2020, there will be a transition period until 31 December 2020
- During transition period EU law continues to apply to and in the UK

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 exchange between social security institutions
- More accurate data exchange between national authorities
- Secure handling of personal data



State of play

- The central EESSI central system was successfully delivered by the European Commission to the Member States in July 2017.
- The first exchange of an electronic message regarding a concrete case involving the social security situation of citizens, between Austria and Slovenia, took place on 10 January 2019.
- 31 countries have already started live exchanges between institutions. Three countries are now ready to exchange messages in all Business Cases.



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