

# MoveS seminar Portugal-Spain

*Mobility of workers between Portugal and Spain  
and their Social Security rights: strategies for  
coordination, cooperation, and control*

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**9 October 2023**

***Venue: Colégio da Trindade, Coimbra University***

Language: Portuguese, Spanish, English

Simultaneous Interpretation provided

# WELCOMING WORDS

Representative of Dean of the faculty of Law of the University of Coimbra

# The MoveS Project

PRESENTED BY:

**EMELLIN DE OLIVEIRA**

Nova School of Law and FMW MoveS National Expert for Portugal

# MoveS

## project presentation

# MoveS

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

- Funded by the European Commission (DG EMPL units E1 'FMW' and E2 'SSC')
- 32 countries covered (EU/EEA/CH/UK)
- Implemented by Eftheia, Deloitte Advisory & Consulting, University of Ljubljana, University of Poitiers
- Four-year project (2022-2025)

# Objectives:

(1) To provide legal expertise in the areas of FMW, SSC and Posting

- **Legal Reports**
- Bimonthly **Monitoring Reports**
- **Ad hoc requests** and **comparative assessments**

## MoveS Legal Reports

- 2023 *'The relationship between the Regulations on the coordination of social security systems and the Directive on the application of patients' rights in cross-border healthcare'*
- 2022 *'Social security and tax law in cross-border cases'*
- 2020 *'The legal status and rights of the family members of EU mobile workers'*
- 2019 *'The application of the social security coordination rules on modern forms of family'*
- 2019 *'The application of free movement of workers and social security coordination rules by national courts' (2020)*
- 2018 *'Social security coordination and non-standard forms of employment and self-employment: Interrelations, challenges and prospects'*
- 2018 *'Consequences and possible solutions in case of lump sum payment of pensions, reimbursement of contributions and waiver of pensions in cross-border situations'*



# Objectives:

(2) Disseminate expertise and increase experts' and practitioners' knowledge by means of:

- **National seminars**
- **Webinars**
- **Information tools & communication**
- **Training for EC staff**

## Seminars & webinars

- 8 one-day seminars a year
- 3 webinars
- Audience: Representatives of competent authorities and institutions, social partners, NGOs, judges, lawyers and academics

# Seminars 2023



	<b>Date (2023)</b>	<b>Country (City)</b>
1.	23/02	Poland (Warsaw)
2.	21/04	Italy (Turin)
3.	26/05	Switzerland (Lausanne)
4.	16/06	Estonia (Tallin)
5.	29/06	Austria (Salzburg)
6.	12/09	United Kingdom (Nottingham)
7.	09/10	Coimbra (Portugal)
8.	25/10	Bulgaria (Sofia)



**Deloitte.**



*Funded by the*



# Webinars 2023

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	<b>Date (2023)</b>	<b>Topic</b>
1.	24.04	European social security coordination and digitalization
2.	07.07	Cross-border healthcare
3	23.11	Seasonal workers

# Information tools & Communication

- [A-Z on social security coordination](#)
- [Social Security Coordination Regulations database](#)

# A-Z Information tool

## Moving & working in Europe

Working in another EU country ▾

EU social security coordination ▾

Network of legal experts (MoveS) ▲

Case law

## A-Z on social security coordination (FAQs)

Social Security Coordination Regulations database

Network of experts on statistics

## A-Z on social security coordination (FAQs)

 ▾

The '**A-Z of social security coordination (FAQs)**' is a facility setting out the basic principles and frequently raised issues in field of social security coordination.

You are invited to first read the [introduction](#) into the theory of social security coordination and the coordination instruments of the European Union.

You will then find more in-depth information structured in 70 keywords. Each keyword provides answers to specific questions and includes plenty of practical examples and links to further information sources to guide you through this complex topic.

Some keywords provide you with specific definitions (e.g. self-employed person, frontier worker), while others explain the legislative aspects of certain procedures (e.g. cross-border medical care, posting of workers).

You can use this tool to expand your own knowledge or to find the answer to practical questions. All you have to do is click on the relevant keywords below in order to see more detailed information.

A

[Access to social assistance and other benefits not covered by the material scope of Regulation 883/2004](#)

H

[Harmonisation of social security](#)

P

[Paternity benefits](#)

[Pensions](#)

[Personal scope](#)

# Social Security Coordination Regulations database

(EC) Regulation No 883/2004	(EC) Regulation No 987/2009	(EC) Regulation No 1408/71	(EC) Regulation No 574/72								
<p><b>(EC) Regulation 883/2004</b></p> <p><b>TITLE 1: GENERAL PROVISIONS</b></p> <p><a href="#">Art. 1</a>: Definitions</p> <p><a href="#">Art. 2</a>: Persons covered</p> <p><a href="#">Art. 3</a>: Matters covered</p> <p><a href="#">Art. 4</a>: Equality of treatment</p> <p><a href="#">Art. 5</a>: Equal treatment of benefits, income, facts or events</p> <p><a href="#">Art. 6</a>: Aggregation of periods</p> <p><a href="#">Art. 7</a>: Waiving of residence rules</p> <p><a href="#">Art. 8</a>: Relations between this Regulation and other coordination instruments</p> <p><a href="#">Art. 9</a>: Declarations by the Member States on the scope of this Regulation</p> <p><a href="#">Art. 10</a>: Prevention of overlapping of benefits</p> <p><b>TITLE 2: DETERMINATION OF THE LEGISLATION APPLICABLE</b></p>	<p><b>(EC) Regulation 883/2004: Art. 1</b></p> <p>For the purposes of this Regulation:</p> <ol style="list-style-type: none"> <li>'activity as an employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;</li> <li>'activity as a self-employed person' means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Member State in which such activity or equivalent situation exists;</li> <li>'insured person', in relation to the social security branches covered by Title III, Chapters 1 and 3, means any person satisfying the conditions required under the legislation of the Member State competent under Title II to have the right to</li> </ol> <table border="1" data-bbox="741 1043 1715 1119"> <thead> <tr> <th data-bbox="741 1043 993 1119">Implementing Articles of Reg. 987/2009</th> <th data-bbox="993 1043 1236 1119">Corresponding Articles of Reg. 1408/71</th> <th data-bbox="1236 1043 1479 1119">Administrative Commission Decisions</th> <th data-bbox="1479 1043 1715 1119">Corresponding CJEU Case Law</th> </tr> </thead> <tbody> <tr> <td colspan="4" data-bbox="741 1119 1715 1219"> <p><b>Implementing articles (EC) Regulation 987/2009 Articles</b></p> <p><b>Art. 1</b></p> </td> </tr> </tbody> </table>	Implementing Articles of Reg. 987/2009	Corresponding Articles of Reg. 1408/71	Administrative Commission Decisions	Corresponding CJEU Case Law	<p><b>Implementing articles (EC) Regulation 987/2009 Articles</b></p> <p><b>Art. 1</b></p>					
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<p><b>Implementing articles (EC) Regulation 987/2009 Articles</b></p> <p><b>Art. 1</b></p>											

## 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!

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

# *Latest developments in the field of free movement of workers at European Level*

PRESENTED BY:

## IVA ZAMARIAN

European Commission - DG EMPL – Unit E1

# Overview

**1. Free Movement of Workers**

**2. Intra EU labour mobility**

**3. Recent developments + recent case law**

## Principle of free movement of workers

- *Fundamental principle of EU law*
- *Based on Article 45 TFEU and Regulation 492/2011 on free movement of workers and case law of the Court of Justice of the EU*

*Right of EU citizens to work and reside in another Member State, right to access to labour market under the same conditions as nationals*

*Right to equal treatment with nationals in access to employment, remuneration, working conditions and dismissal and all other social and tax advantages.*

## **Directive 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers**

*Specific measures to ensure effective protection of rights conferred by Art 45 TFEU and Regulation (EU) No 492/2011 (defense of rights).*

*National body or bodies must exist to provide assistance to Union workers (including jobseekers) and their family members;*

*Better provision of information at national level (also about EU rights)*

*The Directive does not create new "substantive" rights for mobile workers*

*The list of the FMW bodies is available at*

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

## EURES Network

- *Based on 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 27 countries plus Switzerland, Iceland, Liechtenstein and Norway.*
- *EURES Portal brings together job vacancies and job applications and provides information on working and living conditions in MS, job matching engine is in place*
- *The coordination of the EURES Network (European Coordination Office) has been transferred to the European Labour Authority*

## **Intra EU labour mobility after the pandemic**

- How mobile are European citizens?***
- Annual Report on Intra EU mobility 2022***
  
- How European citizens think about mobility?***
- Eurobarometer survey' Intra-EU labour mobility after the pandemic'***

# Intra-EU mobility Report 2022

## Key Figures

- *~ 14 million movers (all ages)*
- *~ 10 million working age movers*
- *3.9 % of EU working age population*
- *Stagnation of working age movers*

- *~ 17 million TCN (working age)*

- *3.6 million postings*
- *1.7 million frontier workers*

- 804 000 movers (-21%)
- 611 000 returnees (-14%)



## Intra EU labour mobility (ii)

### Where do movers come from?

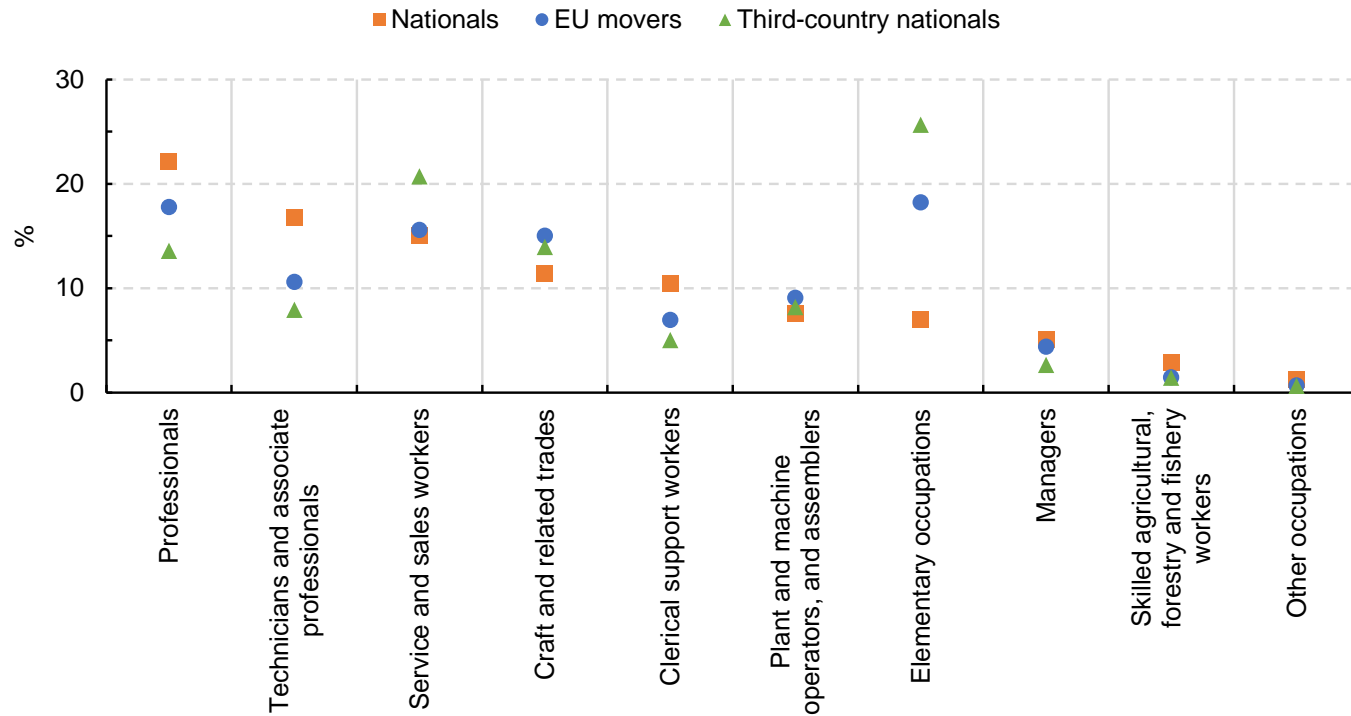
- They come from
  - RO (>1/5)
  - IT and PL (1/5)
  - PT, HR, BG (1/5)
  - DE, FR, EL, ES (almost 1/5)
  - Remaining 17 MS (1/5),



### Where do they go to?

- They go to
  - DE (1/3),
  - ES, IT and FR (1/3),
  - 1/3 to the rest of the EU

# Where do mobile workers work?



# Thinking about mobility

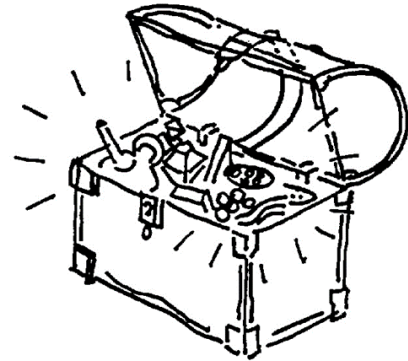
- 58% think labour mobility is good for the labour market and good for European integration – in 2009 only 50% thought it was good for the labour market
- Citizens in Austria (34%) and Greece (45%) are least convinced that labour mobility is good for the labour market
- Citizens in Portugal (81%), Lithuania (79%) and Ireland (76%) are most convinced of its positive effects, in Spain 72%
- Denmark (65%), Finland (72%) and Sweden (66%) see mobility quite positive.



# To further discover the reports!

[Intra-EU labour mobility after the pandemic - December 2022 - - Eurobarometer survey \(europa.eu\)](#)

<https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10545&furtherNews=yes>



©

## Ongoing work: Posting of workers

- ***Directive 2014/67 (Enforcement Directive)***
- *Implementation Report and Conformity checks*
- *Infringement proceedings ongoing*
  
- ***e-Declaration***
  
- ***Directive 2018/957 (amending Directive 96/71):***
- *Conformity check currently being carried out*
- *Implementation report on amending Directive being prepared*

# Enforcement Directive (EU) 2014/67: Implementation report

## Conclusions:

- 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

# Enforcement Directive (EU) 2014/67: latest developments

- On 26/01/2023 Reasoned Opinions were sent to 17 Member States.
- The Commission challenged issues related to workers' protection, administrative requirements and control measures, subcontracting liability and proportionality of sanctions
- All Member States replied.



## . Posting of workers - eDeclaration

- **Basis: Directive 2014/67/EU, Article 9(1)(a)**
- **COM Communication “Updating the 2020 New Industrial Strategy”, 5.5.2021**

The Commission will work with Member States to:

- devise a common form for the declaration of the posting of workers,
  - in an electronic format,
  - on a voluntary basis.
- **Working group of interested Member States (24)**
  - **Common form should be devised by the end of the year**



# Review of implementation of Directive (EU) 2018/957

- Since 04/11/2021, All Member States have notified the full transposition of the Directive.
- The Commission has finished the assessment of the transposition measures.
- Implementation report end 2023
- Supporting temporary cross-border work study (2022-2023)



## Ongoing work: Free movement of workers

- *Enforcement activities:*
- *infringements;*
- *complaints;*
- *petitions;*
- *parliamentary questions;*
- *SOLVIT.*
- *Withdrawal Agreement: monitoring*

# The European Labour Authority (ELA) Regulation 2019/1149

- The Authority shall assist Member States and the Commission in their effective application and enforcement of Union law related to labour mobility across the Union and the coordination of social security systems within the Union
- Scope:  
Free movement of workers and EURES (Regulation EU No 492/2011; Directive 2014/54/EU, Regulation (EU) 2016/589);
- Posting of workers (Directive 96/71/EC (as amended by Directive (EU) 2018/957) and Directive 2014/67/EU);
- Social security coordination (Regulations (EC) No 883/2004 and 987/2009);
- Social aspects of international road transport rules (Regulation (EC) No 561/2006; Directive 2006/22/EC; Regulation (EC) No 1071/2009).

## ELA tasks:

- facilitate access to **information** and **coordinate EURES**;
- facilitate **cooperation** and exchange of information between Member States;
- coordinate and support **concerted and joint inspections**;
- carry out **analyses and risk assessments** on issues of cross-border labour mobility;
- support Member States with **capacity building**;
- support Member States in **tackling undeclared work**;
- **mediate** disputes between Member States.



# The European Labour Authority : focus in 2023

- Focus on the construction sector: specific attention to posting
- ELA will work towards being a fully operational agency by 2024
  - Implementation of the Posting 360 Program and Posting Forum
  - First meeting 13-14 March 2023
  - 6 Areas to cover:
    - Implementation of the Directives on posting of workers
    - Effective administrative requirements and control measures
    - Cooperation in the field of social security coordination
    - Digitalisation – tools and opportunities
    - Posted Third Country Nationals
    - Data collection and streamlining of data



## Recent case law (i)

- **Recognition of experience in the public service of other Member States:** C-24/17 ÖSTERREICHISCHER GEWERKSCHAFTSBUND, GEWERKSCHAFT ÖFFENTLICHER DIENST V REPUBLIK ÖSTERREICH; C-703/17 KRAH; C-710/18 - WN V LAND NIEDERSACHSEN; C-86/21 - Gerencia Regional de Salud de la Junta de Castilla y León, C-132/22 -BM, NP – v – Ministero dell’Istruzione, dell’Università e della Ricerca – MIUR,
- **Access to social advantages:** C-447/18 UB V GENERÁLNY RIADITEĽ SOCIÁLNEJ POISŤOVNE BRATISLAVA; C-483/17 TAROLA; C-181/19 – JD V JOBCENTER KREFELD – WIDERSPRUCHSSTELLE; C-27/20 PF, QG c, Caisse d’allocations familiales; C-328/20 Comission/Austria
- **Frontier workers’ rights:** C-410/18 NICOLAS AUBRIET V MINISTRE DE L’ENSEIGNEMENT SUPÉRIEUR ET DE LA RECHERCHE; C-801/18 EU CONTRE CAISSE POUR L’AVENIR DES ENFANTS; C-802/18 - CAISSE POUR L’AVENIR DES ENFANTS V FV, GW; C-830/18 - PF AND OTHERS V LANDKREIS SÜDLICHE WEINSTRASSE

## Recent case law (ii)

- **Taxation:** C-272/17 Zyla; C-35/19 BU / Belgium; C-168/19 and 169/19 HB and IC/ Istituto nazionale previdenza Sociale; C-241/20 BJ/ Belgium
- **Recognition of professional qualifications:** C-634/20 A Sosiaali-JA; C-577/20 A Ja Terveysalan; C-166/20 BB/Lietuvos Respublikos
- **Residence rights:** of jobseekers (C-710/19 GMA V BELGIUM), of retired workers (C-32/19 - AT V PENSIONSVERSICHERUNGSANSTALT)
- **Retention of worker status** C-483/17 Tarola
- **Residence requirement for debtor protection**  
C-716/17 - A

Thank you for your attention!

*EMPL-E1-UNIT@ec.Europa.eu*

*<http://ec.Europa.eu/social>*



*Latest developments at EU level in the field of  
social security coordination*

PRESENTED BY:

**TOMASZ KARPOWICZ**

European Commission - DG EMPL – Unit E2

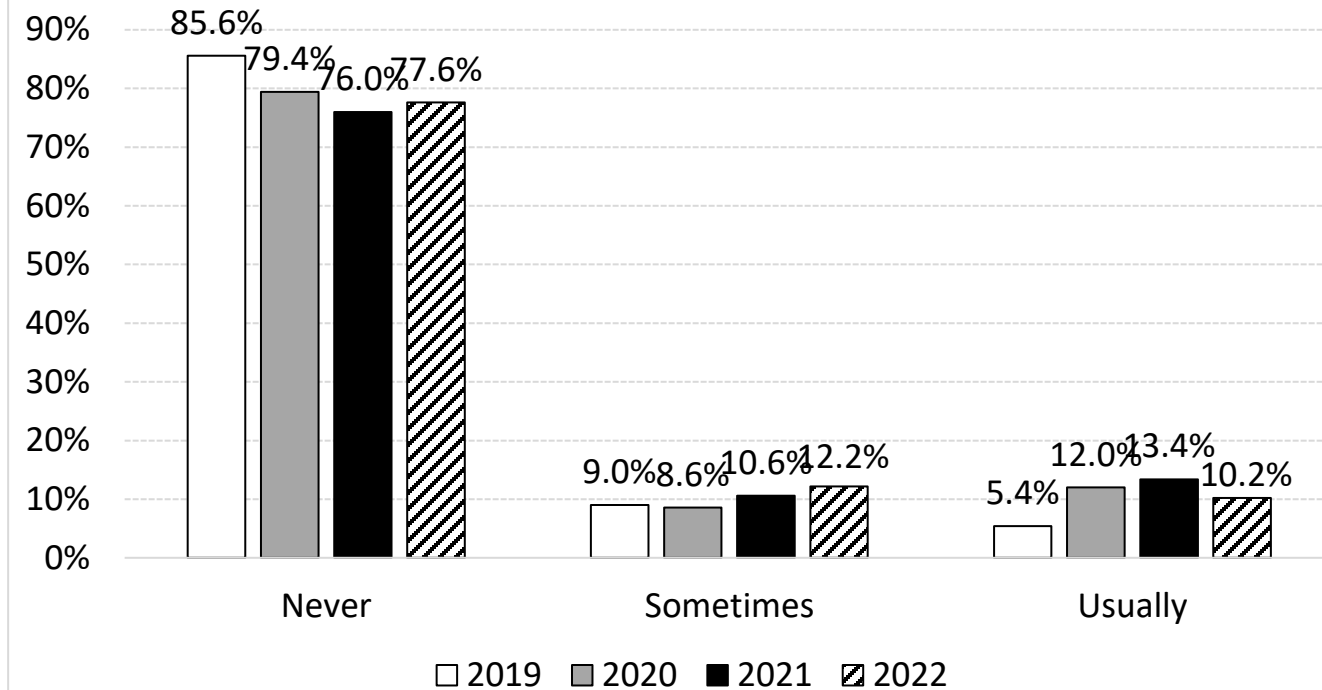
# Overview

1. Cross-border telework
2. Revision of Regulations 883/2004 and 987/2009
3. Digitalisation of social security coordination



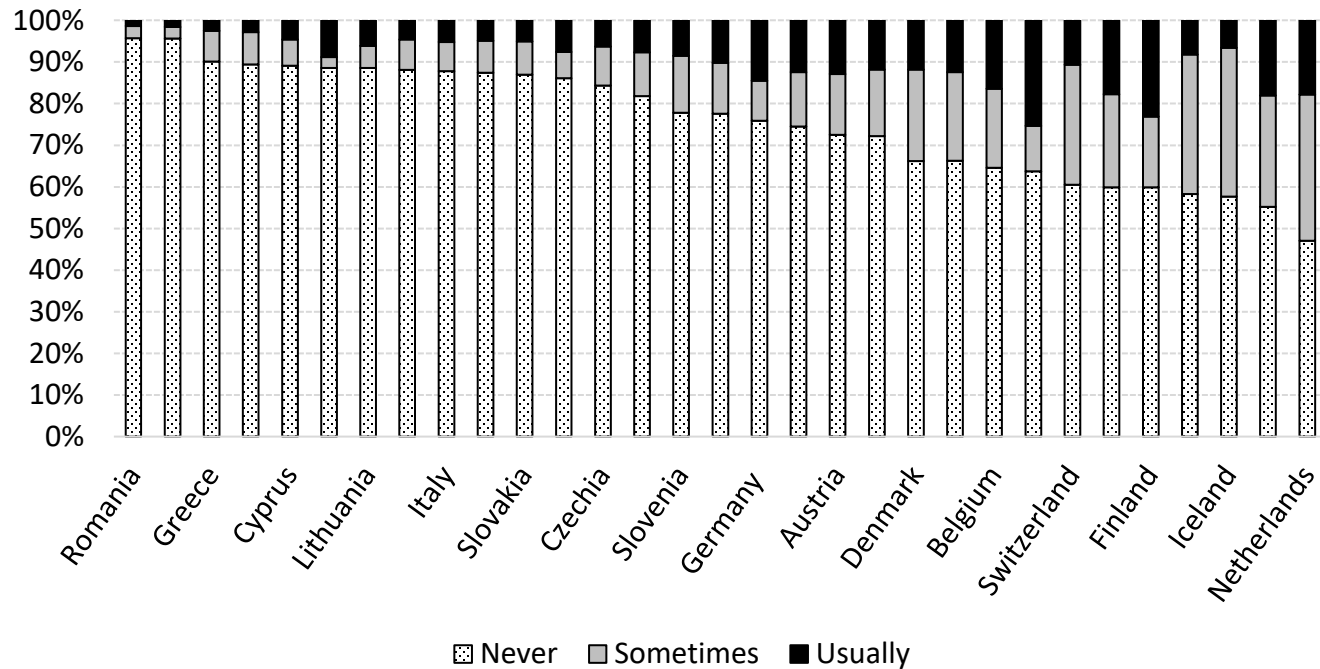
# Cross-border telework

## Employed persons in the EU working from home, 2019 - 2022



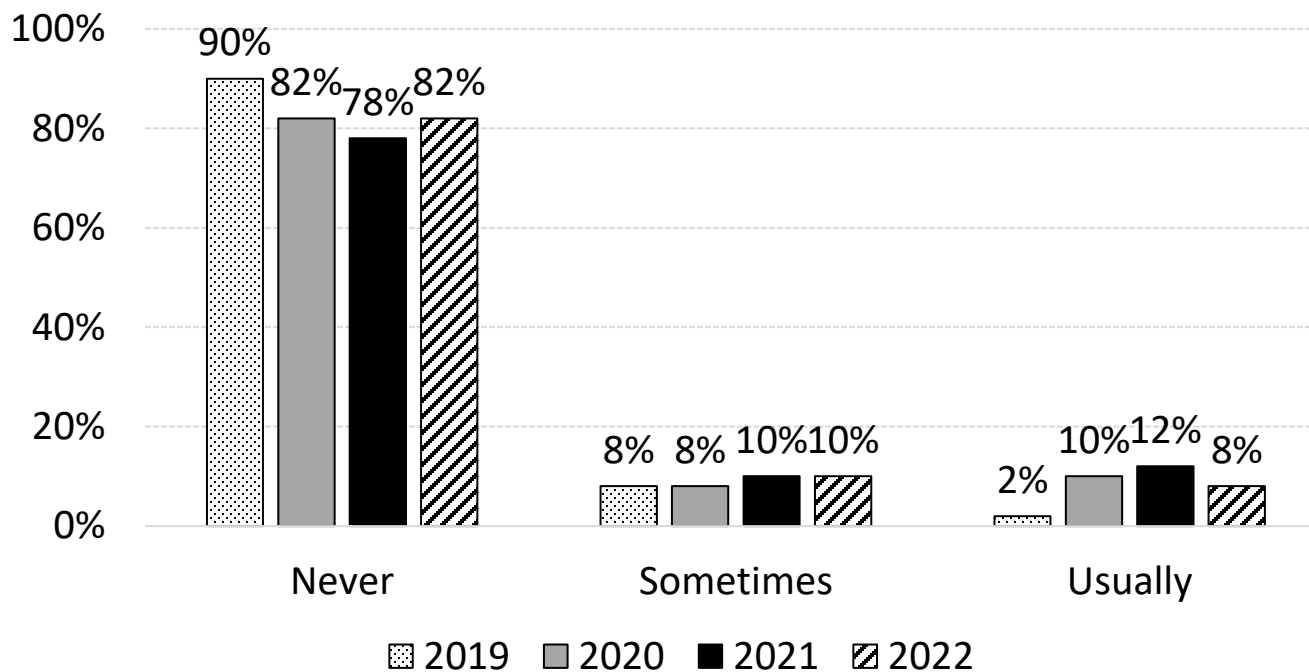
Source: Eurostat [\[lfsa\\_ehomp\]](#)

## Employed persons in the EU working from home, 2022



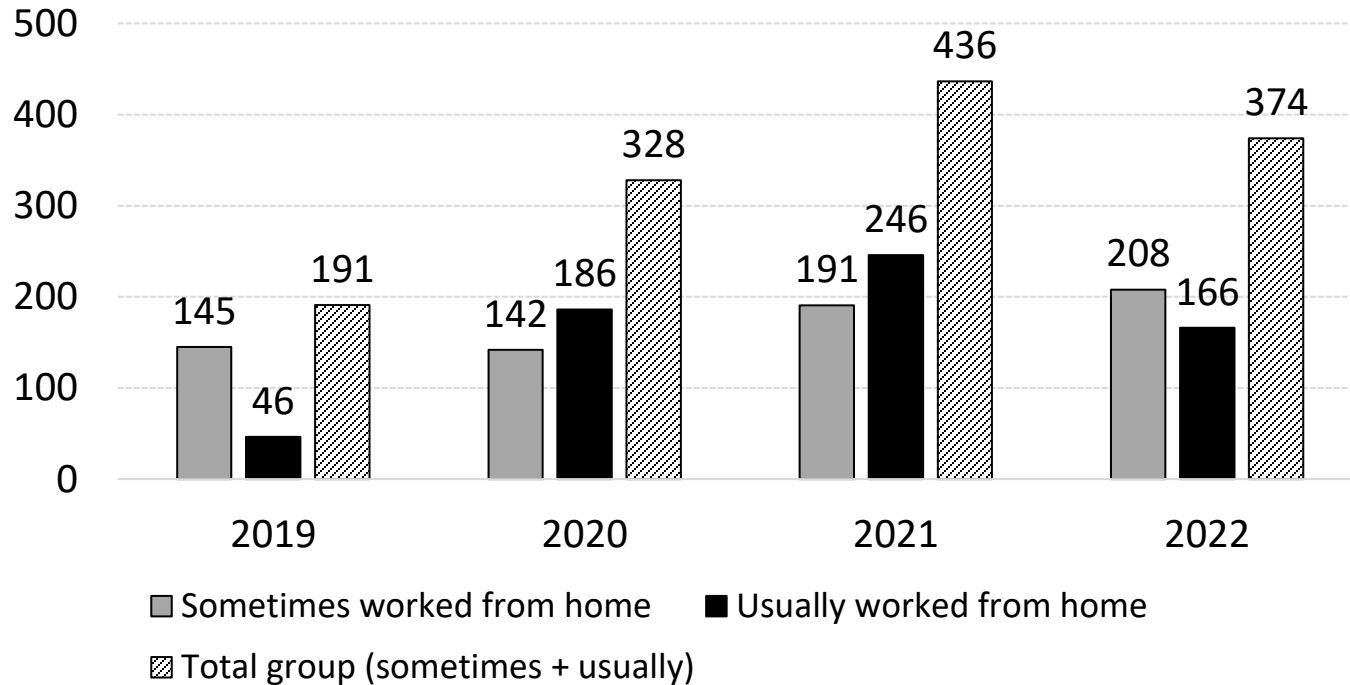
Source: Eurostat [[lfsa\\_ehomp](#)]

## Cross-border workers in the EU working from home, 2019 - 2022



Source: Calculations based on Eurostat EU-LFS data

## Estimated number of cross-border workers in the EU working from home (in ,000)



Source: Calculations based on Eurostat EU-LFS data

## Cross-border workers in the EU working from home, 2022



Source: Calculations based on Eurostat EU-LFS data



## Covid-19 and telework

- Telework was an important instrument to “flatten the curve” of COVID-19 infections.
- Telework in a Member State other than the competent (“usual”) Member State of employment due to COVID-19 did not lead to a change of applicable legislation.
- Telework should not have been hampered/delayed/interrupted (only) due to the application for a PD A1 and/or an exemption agreement during the pandemic.

## Flexibility

- Key during COVID-19 pandemic, in a *force majeure* context → pragmatic solution
- The Administrative Commission (AC) adopted a **Guidance Note on COVID-19 pandemic** for competent institutions, which was valid until 30 June 2022.
- Objective: to avoid changes of the applicable legislation due to Covid-related telework.

## Telework beyond the pandemic (1)

- Advantages for employers and workers: large-scale telework is here to stay
- In June 2022, the AC endorsed a **new guidance note on telework**:
  - flexible interpretation of the applicable legislation rules (e.g. occasional telework can be considered as posting under Art.12 of Reg. 883/2004);
  - transition period of 12 months (1 July 2022 - 30 June 2023);
  - no abrupt changes of applicable legislation during that period to ensure a smooth transition to full application of the guidance note as of 1 July 2023.

## Telework beyond the pandemic (2)

- The Commission and Member States' representatives in the AC set up a dedicated **ad-hoc group** focused **on cross-border telework**.
- As a mid-term solution within the existing rules the group proposed that the interested countries conclude a **multilateral framework agreement** (based on Art. 16 of Regulation (EC) No 883/2004).
- If no multilateral/bilateral arrangement concluded -> return to normal rules under the Regulations as of **1 July 2023**.

# Revision of the social security coordination Regulations



## State of play – formal steps

- Commission proposal adopted in December 2016
- Provisional agreement achieved between the negotiators of the European Parliament, the Presidency of the Council and the European Commission (March 2019 and December 2021)
- No qualified majority in the Council
- Negotiations on-going during Spanish Presidency

# Digitalisation of Social Security Coordination

## Electronic Exchange of Social Security Information (EESSI) – European Social Security Pass (ESSPASS)



## What is EESSI?

EESSI (Electronic Exchange of Social Security Information) connects electronically around 3.500 social security institutions across Europe, allowing for faster and secure exchanges of information, as required by EU social security coordination rules.

### Benefits of EESSI

- Faster and secure information exchange → quicker and more efficient handling of social security coordination cases.
- Facilitating the implementation of social security coordination rules
- More accurate exchange and secure handling of data



## **EESSI: State of Play**

- *All 32 countries (27 EU Member States + IS, LI, NO, CH and UK) connected to the system;*
- *13 countries fully in production (with all Business Use Cases);*
- *Since 2019, more than 47 million messages exchanged, and 14 million cases handled*
- *Family benefits and Legislation Applicable sectors deployed by all countries*
- *Full implementation expected by end of 2024*



Government-to-Government

# We are working on



Government-to-Businesses and Citizens

## EESSI - IT system helping social security institutions exchange information across Europe



## European Social Security Pass initiative

A pilot project was launched to digitally verify citizens' social security entitlements across borders



# ESSPASS pilot project

## WHAT?

- Exploring an EU-wide, standardized, citizen centric digital solution for the cross-border verification of social security entitlements.
- Digitalising procedures related to the Portable Documents and the European Health Insurance Card (EHIC)

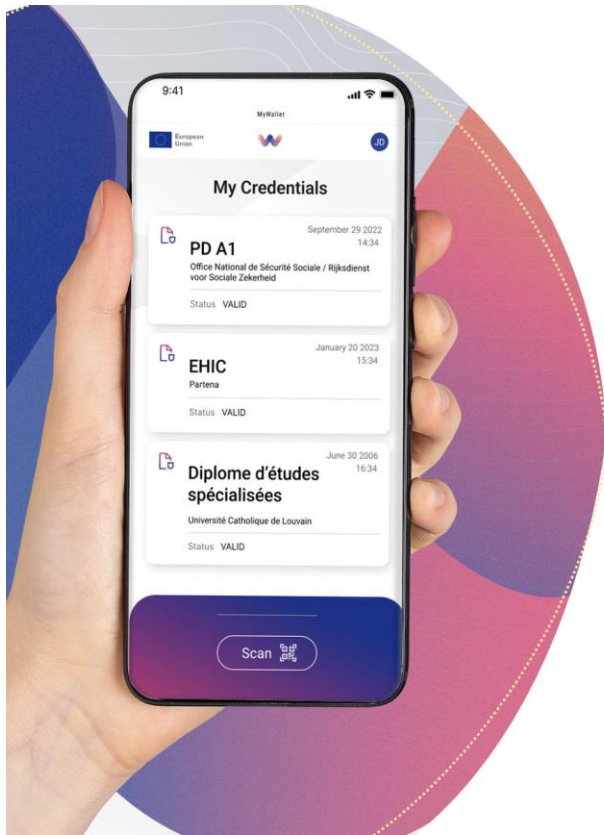
## WHY DO WE NEED A PILOT?

- Prove technical feasibility
- Early identify legal and organisational constraints
- Assess costs, benefits and risks
- Verify and gain countries' true commitment
- Build ownership

## STATE OF PLAY

- Project was launched with INPS and focused on PD A1
- Consortia of Member States piloting PD A1 and EHIC with the financial support of the Digital Europe programme (started 1<sup>st</sup> May 2023) – DC4EU & Vector
- 2023 CWP: Communication on digitalisation in social security to support free movement and labour mobility

## eIDAS and the EU digital identity (EUDI) wallets



- eIDAS regulation: framework for Electronic Identification, Authentication, and Trust Services
- Revision of eIDAS (ongoing): introduction of a standardised interoperable electronic wallet
- Verifiable credentials will be stored in the EUDI wallet and linked to citizens ID
- Credentials can be the EHIC, PDA1, PDP1, university certificates, driving license,...

### The Single Digital Gateway Regulation

- by the end of 2023, citizens should be able to perform fully online a number of procedures in all EU member states - like requesting a PD A1, EHIC, claiming pension benefits

# Digitalisation of social security procedures

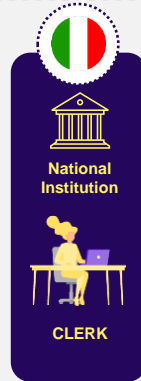
ENVISAGED SOLUTION: REUSING AND LEVERAGING OTHER INITIATIVES



Your Europe  
National Portals

Citizen requests a Portable Document\*

National Institution assesses the request and approves the issuance of the document



National Institution creates a Verifiable Credential

ESSPASS



Citizen downloads the Verifiable Credential in her/his Digital Wallet



Wallet

future EUDI wallet

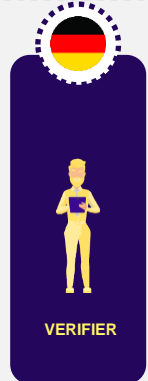


Verification App

Wallet

Citizen presents the Verifiable Credential to the Verifier

Verifier checks the citizen's Verifiable Credential



EESSI

(when applicable\*\*)

National Social Security Institution in parallel shares the information with the receiving Institution via EESSI



\*\* When these procedures require an interaction between institutions of different countries, it will take place via EESSI.

\* Portable documents related to the applicable legislation, healthcare, pensions, sickness and unemployment benefits – e.g. EHIC, PD A1, PD S1...

## The Commission's Communication includes specific actions, aiming at...



### Citizen-centric approach to digitalisation

A seamless digital experience for mobile citizens and businesses interacting with national authorities for social security purposes



### Efficient cross-border public services

Delivering efficient public services in social security, which are cross-border, digital and interoperable



### Better exchanges between institutions

Further improving the cooperation and information exchange between social security institutions

# More digitalisation in social security coordination...

What would it mean for \_\_\_\_\_  
Citizens?



**Smother access  
to public services**

Seamless and smoother experiences when accessing cross-border public services in social security



**Verifiable  
digital  
documents**

Digital entitlement documents in their digital wallets, which can be verified online by relevant authorities



**Full control  
of own data**

Full control and ownership of their personal data. Citizens can decide which data to share and with whom



**Easier exercise  
of social  
security rights**

in another country through an efficient system for proving and verifying entitlements



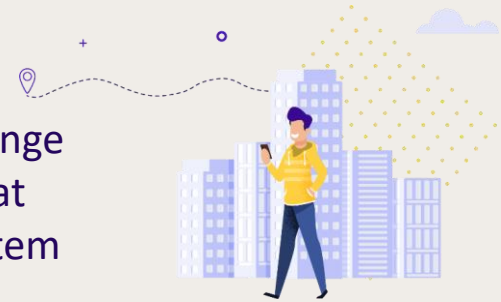
**Faster  
processing of  
claims**

More rapid and secure processing of their claims for social security benefits

## Some of the main Actions

1.

Full implementation of the Electronic Exchange of Social Security Information by end 2024 at the latest; further improvements of the system and processes



2.

A more integrated data exchange between social security systems and institutions, with further interoperability, across borders and sectors

3.

Sustained investments in automating processes to handle cross-border social security cases

4.

Yearly high-level meetings with Member States to track and support progress





Some of the main  
Actions

5.

Full commitment of Member States to the European Social Security Pass pilot activities; based on results, decision on potential large-scale deployment



6.

Digitalisation of additional social security coordination procedures by 2025, building on the Single Digital Gateway Regulation

7.

Accelerated efforts to meet the Digital Decade's objectives of 100% public services being accessible online by 2030, including in social security coordination

8.

Analysis of the possibilities to further simplify procedures, providing a seamless digital experience in EU labour mobility

# Learn more

:: [Press release - Digitalisation in social security coordination](#)

:: Visit our web page : [digitalisation of social security coordination](#)

Directorate General for Employment, Social Affairs & Inclusion, European Commission

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<http://ec.Europa.eu/social>

# Q&A

# COFFEE BREAK

10.40-11.00

# SOCIAL SECURITY COORDINATION PANEL

## CHAired BY

### PROF. DR. FRANCISCO PEREIRA COUTINHO

Nova School of Law and FMW national expert for PT

# *Coordination of Social Security between States sharing a border: solutions, good practices, and cooperation*

PRESENTED BY:

## PROF. DRA. KRISTINA KOLDINSKA

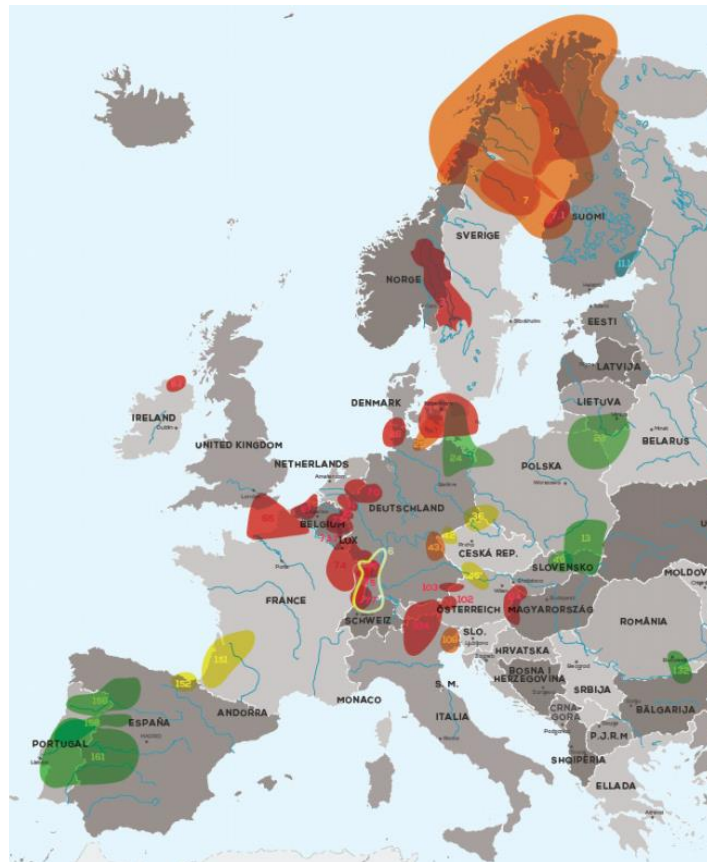
Karlova University, Prague  
MoveS Visiting Expert for Czechia

## Important factors of cross-border mobility

- wage differences
- job opportunities
- cross-border transport connections
- knowledge of the language of the neighbouring country
- housing and / or living costs
  
- costs of health care
- differences in amount of benefits



# EU cross-border mobility - intensity



# Issues in cross-border mobility

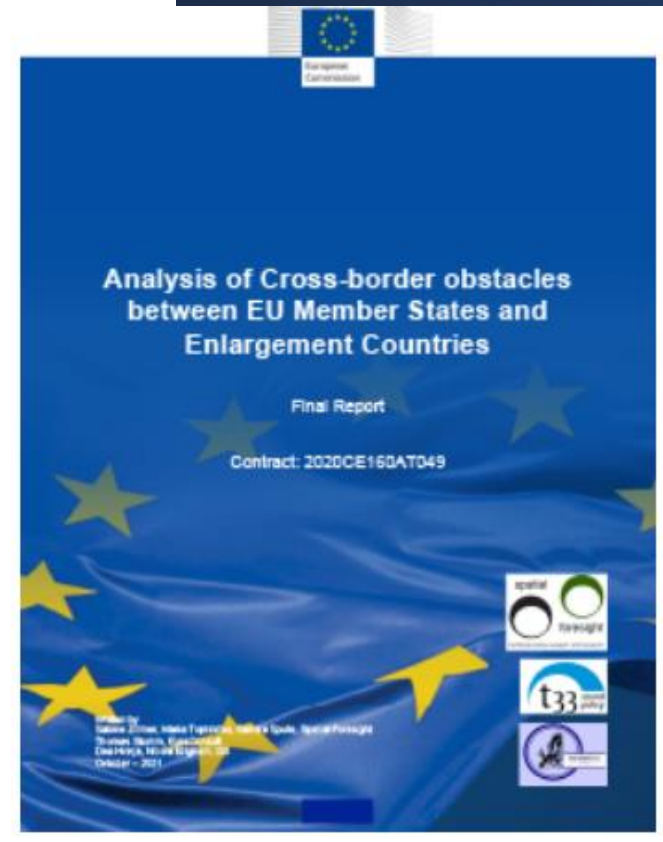
- Differences in the systems of social allowances and tax systems are serious obstacles limiting mobility for many potential cross-border employees
- Lack of information - fear of potentially unfavourable results of working abroad
- relevant official bodies often have great doubts about the interpretation and application of existing regulations at the national level.
- In some cross-border regions also providing accurate information remains a challenge due to the frequent changes in relevant regulations within the member states

## Issues in cross-border mobility II.

- problems associated with the lack of effective mutual recognition of qualifications;
- difficulties linked with a lack of coordination between the actors involved to tackle problems when these arise; and
- uncertainties regarding fiscal issues

# Conclusions of a comparative study

- National and regional authorities should trigger coordination points or alike.
- Regional and local authorities should structure processes for the identification and analysis of legal or administrative obstacles.
- The European Commission should provide clear information known obstacles and replicable solutions, enhancing mutual learning.



# Cross-boarder health care - example

- 2022 report on implementation of Dir. 2011/24/EU
- Several regional agreements in healthcare offer models of cooperation to overcome financial and administrative barriers
- The COVID-19 pandemic has raised the importance of cross-border regional cooperation.
- European Health Data Space
  - eHealth digital service infrastructure
  - ePrescription
  - Rare diseases

# CJEU case examples – neighbouring countries issues

# C-328/20 Commission v Austria

## • Facts

- On 1 January 2019, Austria put in place an adjustment mechanism for calculating the flat-rate amount of family allowances and of various tax advantages which it grants to workers whose children reside permanently in another Member State.
- The adjustment may be made upwards or downwards depending on the general price level in the Member State concerned.

# C-328/20 Commission v Austria

- CJEU:
- Benefits at issue constitute family benefits falling within the scope of the SSC Regulation
- the Austrian legislation at issue, in so far as it carries out an adjustment of family benefits according to the State of residence of the beneficiary's children, constitutes an infringement of the SSC Regulation
- As regards, next, the family allowances and all of the tax advantages - EU law prohibits all discrimination in matters of social security based on the nationality of migrant workers.
- The adjustment mechanism at issue, since it is applied only in cases where the child resides outside Austria, essentially affects migrant workers given that their children are more likely to reside in another Member State.
- great majority of migrant workers affected by that mechanism come from Member States where the cost of living is lower than in Austria
- adjustment mechanism constitutes indirect discrimination on grounds of nationality which
- migrant workers participate in the same way as a national worker in the determination and financing of the contributions
- Austrian legislation at issue also constitutes an infringement of the SSC Regulation



# Cross-border issues – FMW and SSC border – C-411/22 Thermalhotel Fontana

- Facts
- Thermalhotel Fontana is headquartered in Austria. In 2020, several employees of this hotel tested positive for COVID19, which Thermalhotel Fontana reported to the Austrian public health authority.
- Since those employees resided in Slovenia and Hungary, AT authority did not impose isolation, but informed the competent SL and HU authorities
- National authorities ordered isolation at their respective place of residence. Thermalhotel Fontana continued to pay the employees concerned their remuneration in accordance with the relevant provisions of the relevant Austrian legislation, since their employment contract was governed by Austrian law.
- Subsequently, Thermalhotel Fontana applied for compensation for the loss of costs incurred as a result of the payment of compensation for earnings.
- That application rejected, as decisions imposing isolation taken by other authorities – condition for compensation not fulfilled.

# Cross-border issues – FMW and SSC border – C-411/22 Thermalhotel Fontana

- Facts
- Thermalhotel Fontana is headquartered in Austria
- In 2020, several employees tested positive for COVID19, which the employer reported to the Austrian public health authority. Since employees resided in SL and HU, competent SL and HU authorities ordered those workers to isolate themselves
- During isolation, employer continued to pay the employees concerned their remuneration in accordance with the AT legislation.
- Subsequently, employer applied to the competent AT authority for compensation for the loss of costs incurred as a result of the payment of compensation for earnings.
- That application was rejected on the ground that the decisions imposing isolation measures had been taken by the authorities of other States

# Thermalhotel case

- ? SSC or FMW?
- SSC not, because compensation does not depend on whether the person was really sick or not – therefore does not fall under SSC Regulation
- Compensation defined as social advantage according to FMW regulation
- AT authorities cannot restrict the residence of the employee concerned in the territory of Austria by a requirement or require that the isolation order be issued by the AT public health authorities in order to provide reimbursement of costs to the employer
- this solution is "half-hearted" because it does not prevent either a positive or negative conflict of competence in extreme situations. This could only be prevented by the application of the rule of a single competent state, which the CJEU has ruled out

Thank you for your attention!

# *Coordination and cooperation on Social Security between Portugal and Spain — the Spanish perspective (applicable legislation)*

PRESENTED BY:

## MATILDE VIVANCOS PELEGRIN

Counselor of the International Area at the Cabinet of the Secretary of State of Social Security and Pensions  
Ministry of Inclusion, Social Security and Migration

# Coordinación y cooperación en materia de Seguridad Social entre Portugal y España

## La perspectiva española (legislación aplicable)

# Instrumentos que facilitan la cooperación:

- Base jurídica de la cooperación >> artículo 76 Reglamento 883/2004
- Cumbres Hispano Portuguesas >>
  - 2020 (en Guarda) la Estrategia Común de Desarrollo Transfronterizo >>>
    - Guía Práctica del Trabajo Fronterizo entre España y Portugal, 2022
- Memorando de Cooperación y Asistencia Técnica en materia de Empleo y Seguridad Social, entre el Ministerio de Empleo y Seguridad Social del Reino de España y el Ministerio de Trabajo, solidaridad y Seguridad Social de la República de 30 de mayo de 2017 >>> MOU entre PT y ES

# Memorando de Cooperación y Asistencia Técnica en materia de Empleo y Seguridad Social entre PT y ES

- Planificación bienal:
  - Plan de Actividades 2017-2018
  - Plan de Actividades 2019-2020
  - Plan de Actividades 2021-2022
- Designación de puntos de contacto a nivel ministerial e instituciones



# Ámbitos de la cooperación:

- **Ámbito bilateral:** Situaciones que afectan solo a PT y ES, situaciones de asegurados de ES o PT que tienen vínculos o intereses en el otro país, residencia, trabajo, etc; donde se aplica la legislación europea, los Reglamentos de coordinación y las instituciones de seguridad social de los dos países se coordinan para la resolución de los expedientes, siempre que pueda surgir un problema, etc.
- La TGSS destaca fundamentalmente situaciones derivadas de la aplicación del artículo 13, en ocasiones es necesario acuerdos de excepción vía art. 16 del R. 883/2004. Supuestos de administradores sociales, dueños de pisos turísticos, etc.
- **Ámbito internacional:** PT y ES coordinamos nuestras posiciones en el ámbito internacional
  - **A nivel europeo:**
    - Comisión Administrativa de coordinación de los sistemas de SS
    - Consejo de la UE
    - Algunos ejemplos
  - **A nivel iberoamericano:**
    - En la Organización iberoamericana de Seguridad Social y el Convenio Iberoamericano de Seguridad Social
    - Ejemplo reciente

# Legislación aplicable a los teletrabajadores en la Unión Europea/EEE/Suiza

## Normativa aplicable a los supuestos de teletrabajo:

- **Reglamentos de coordinación: regla general “*lex loci laboris*”, contemplada en el artículo 11.3 a) del Reglamento CE 883/2004,**
- Con las excepciones previstas en los artículos 12, 13 y 16

## Criterios acordados durante la pandemia (COVID-19):

- **situación de fuerza mayor - Comisión Administrativa - nota - Guía Covid-19 - legislación aplicable –**
- **Finalidad >> una solución pragmática y flexible >>>el teletrabajo en un Estado miembro distinto del Estado miembro competente (en el que se llevaba a cabo la actividad habitualmente) NO dé lugar a un cambio en la legislación aplicable.**

**Nota - Guía de Teletrabajo (originalmente fue la Nota CA 125/22REV3, publicada en la web de COM nota 137/23).**

# Nota - Guía de Teletrabajo de la CA (1)

## Teletrabajo fronterizo “cross border telework”.

(DEF) Toda actividad que pueda ejercerse desde cualquier lugar y que podría realizarse en los locales o en el domicilio del empleador y que:

- se lleva a cabo en uno o varios Estados miembros distintos de aquel en el que están situados los locales o el domicilio del empresario, y
  - se basa en las tecnologías de la información para permanecer conectado con el entorno de trabajo del empleador o de la empresa, así como con los interesados/clientes, a fin de cumplir las tareas que el empleador o los clientes asignen al trabajador, en el caso de los trabajadores por cuenta propia;
- Acuerdo de empresario y trabajador/interés indistinto
  - Lex loci laboris es la regla principal para determinar la legislación, pero se prevén algunas excepciones en el contexto de los art. 12 y 13
  - Teletrabajo temporal en 1 solo EM >> art. 12 R. 883. Se emite un certificado A1 para el teletrabajador por un periodo de hasta 2 años. El empleado sigue bajo la dirección del empresario. Hay acuerdo. 100% del horario/temporalmente.

# Nota - Guía de Teletrabajo de la CA (2)

- Teletrabajo transfronterizo habitual que encajan con los supuestos de trabajo en 2 o más EM. >> art. 13 R. 883:
  - No es posible desviarse del marco legal que establece el artículo 13, por tanto, si el trabajo que se desarrolla en el EM de residencia alcanza o supera el 25%, se alcanza el umbral de parte sustancial del trabajo; en esos casos es posible suscribir un acuerdo en virtud del art. 16 para aplicar la legislación del Em donde la empresa tiene la sede.
- Desarrollo de acuerdos de excepción en virtud del art. 16:
  - Para situaciones individuales
  - Para grupos de personas
  - **marco (FA) (art. 16) entre varios EEMM para situaciones del art. 13**
  - Gestión a través de EESSI
- **La CA señala expresamente en la nota que se deben favorecer aquellos acuerdos excepcionales que se deban a razones familiares del trabajador (cuidado de familiar en situación de hospitalización o dependencia) o para facilitar la actividad laboral a las personas en situación de discapacidad).**
- La nota refleja las conclusiones del Grupo ad hoc - COM y EEMM
- La nota establece un periodo transitorio para seguir aplicando la interpretación del título II del R. 883 durante la pandemia (es decir, que el teletrabajo no lleve a cambios en la legislación aplicable), en la reunión de 30/03/2023 se acuerda que no se extenderá más allá de 30/06/2023, y la nota guía de teletrabajo se aplica a partir de 1/07/2023.

# Algunas consideraciones sobre el teletrabajo...

- ✓ Lo que en principio se perfilaba como una situación transitoria, producto de la pandemia, ha devenido en una fórmula de trabajo con vocación de permanencia, ya sea de forma total o híbrida. Es fundamental saber cómo aplicar las reglas de determinación de legislación aplicable a esta nueva forma de trabajo, en línea con el derecho a la libre circulación .
- ✓ El teletrabajo puede llevarse a cabo desde cualquier lugar, por tanto, es una forma de trabajo independiente de su ubicación. Ya no resulta tan evidente que quien teletrabaja en su Estado miembro de residencia cree con él vínculos tan fuertes como lo haría si se tratara de una actividad dependiente de su ubicación, aquí los criterios pueden ser diversos.
- ✓ La Comisión Adtva., a través del FA, ha considerado que era preciso alcanzar una solución flexible para evitar que los **trabajadores fronterizos (cross-border workers)** vean limitados o perjudicados sus derechos al teletrabajo respecto de los trabajadores que permanecen en territorio nacional.
- ✓ Ej.: es el caso en el que la legislación nacional permitiera teletrabajar 2 o 3 días a la semana. Los residentes en el Estado miembro de la sede de la empresa podrían hacerlo, pero los fronterizos únicamente podrían teletrabajar durante 1 día a la semana, en caso contrario se consideraría que realizan una actividad sustancial en el Estado miembro de residencia y, por aplicación estricta del artículo 13 del Reglamento CE 883/2004, quedarían sujetos a la legislación del Em de residencia.

# Acuerdo marco en los casos de teletrabajo transfronterizo habitual o “*Framework Agreement (FA)*” (1)

*Acuerdo marco relativo a la aplicación del apartado 1 del artículo 16 del Reglamento (CE) n.º 883/2004 en los casos de teletrabajo transfronterizo habitual*

- (FA) que podrá ser firmado voluntariamente por los Estados miembros que así lo consideren oportuno.
- El Acuerdo no se aplica a los trabajadores autónomos, ni a quienes ejerzan una actividad distinta del teletrabajo en el Estado de residencia.
- El trabajador estará sujeto a la legislación del Estado en el que el empresario tenga su domicilio social o su centro de actividad, siempre que el teletrabajo en el Estado de residencia sea inferior al 50% del tiempo total de trabajo.
- El Acuerdo surtirá efectos para los firmantes desde el 1 de julio de 2023.
- Respecto de los Estados miembros que se incorporen al acuerdo en una fase posterior, el Acuerdo surtirá efecto para los mismos el día primero del mes siguiente al de su firma.
- El texto se concluye por cinco años, prorrogándose automáticamente por idénticos períodos de tiempo.

# Acuerdo marco en los casos de teletrabajo transfronterizo habitual o “*Framework Agreement (FA)*” (2)

- Bélgica es el depositario de las firmas. Se creará una web para la publicación del Acuerdo y un listado de los firmantes:

Austria	France	Norway	Switzerland
Belgium	Germany	Poland	The Netherlands
Croatia	Liechtenstein	Portugal	The Slovenian Republic
Czech Republic	Luxembourg	Spain	The Slovak Republic
Finland	Malta	Sweden	

*La fecha de entrada en vigor de todos los países fue el 1 de julio de 2023, excepto la República de Eslovenia que fue el 1 de septiembre*

## Acuerdo marco en los casos de teletrabajo transfronterizo habitual o “*Framework Agreement (FA)*” (2)

- Portugal y España se coordinan antes de firmar el Acuerdo.
- Diversas razones por las que se decide firmar el FA...
- El FA, una solución a medio plazo...



Thank you for your attention!  
[matilde.vivancos@seg-social.es](mailto:matilde.vivancos@seg-social.es)

# *Coordination and cooperation on Social Security between Portugal and Spain – the Portuguese perspective (benefits)*

PRESENTED BY:

## ELISABETE SILVEIRA

Head of Negotiation and Coordination Services for the Implementation of International Instruments of the  
Directorate General for Social Security

# A mobilidade dos trabalhadores entre Portugal e Espanha e os seus direitos de segurança social: estratégias de coordenação, cooperação e controlo

# Coordenação e cooperação em matéria de segurança social entre Portugal e Espanha – a perspectiva portuguesa (prestações)

# Breve enquadramento

Regulamentos (CE) n.ºs 883/2004 e 987/2009

## Âmbito de aplicação pessoal

- Trabalhadores / fronteiriços / transfronteiriços
- Membros da família
- Cidadãos não activos

## Âmbito de aplicação material

- Prestações de segurança social

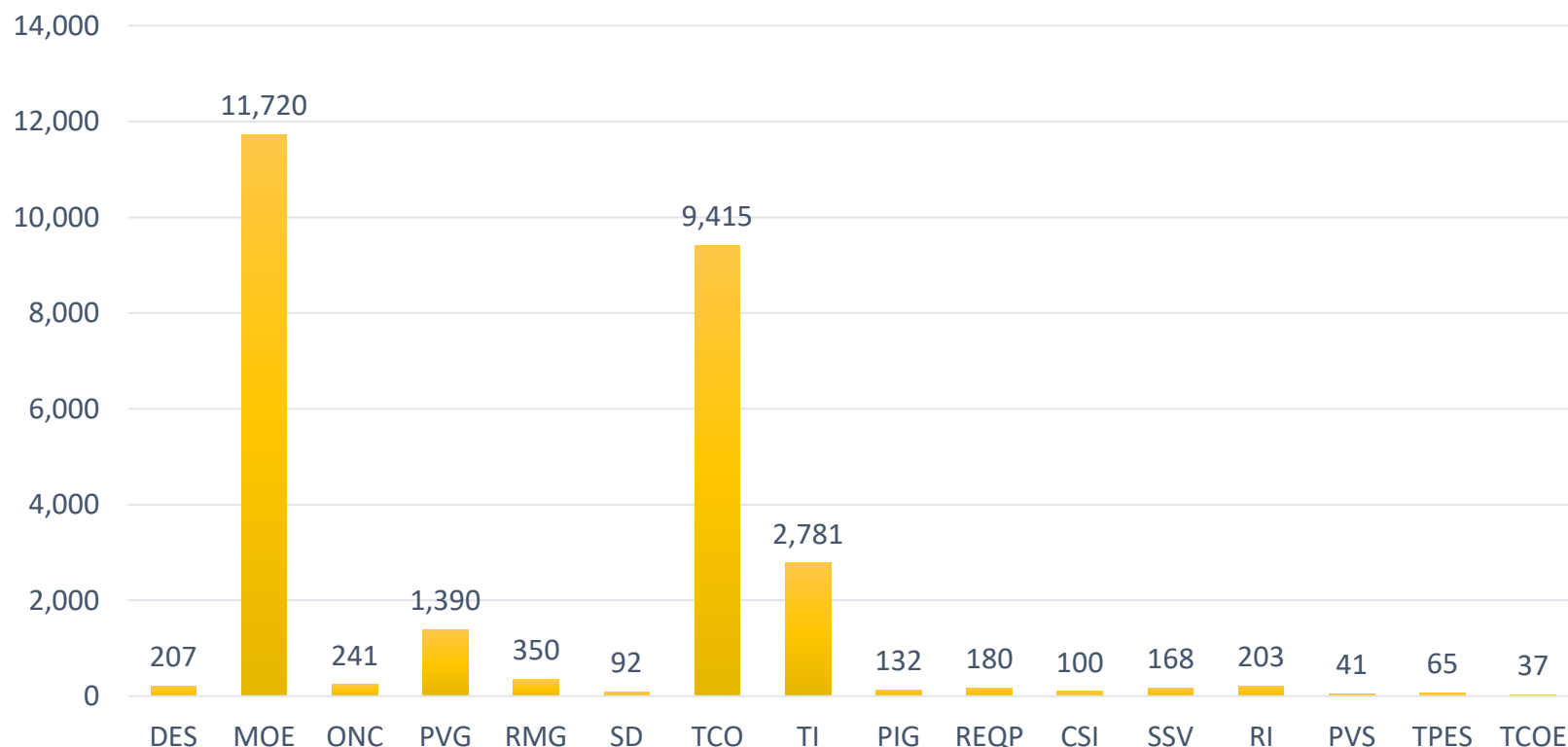
## Legislação aplicável

# Conceito de trabalhador fronteiriço Artigo 1.º, alínea f), Reg 883/2004

“pessoa que exerça uma actividade por conta de outrem ou por conta própria num Estado-Membro e que resida noutro Estado-Membro ao qual regressa, em regra, diariamente ou, pelo menos, uma vez por semana”

- Necessária fronteira comum?
- Controlo / Livre circulação / Sem dados estatísticos (nem em geral, nem entre PT/ES)
- Comunicação entre instituições competentes?

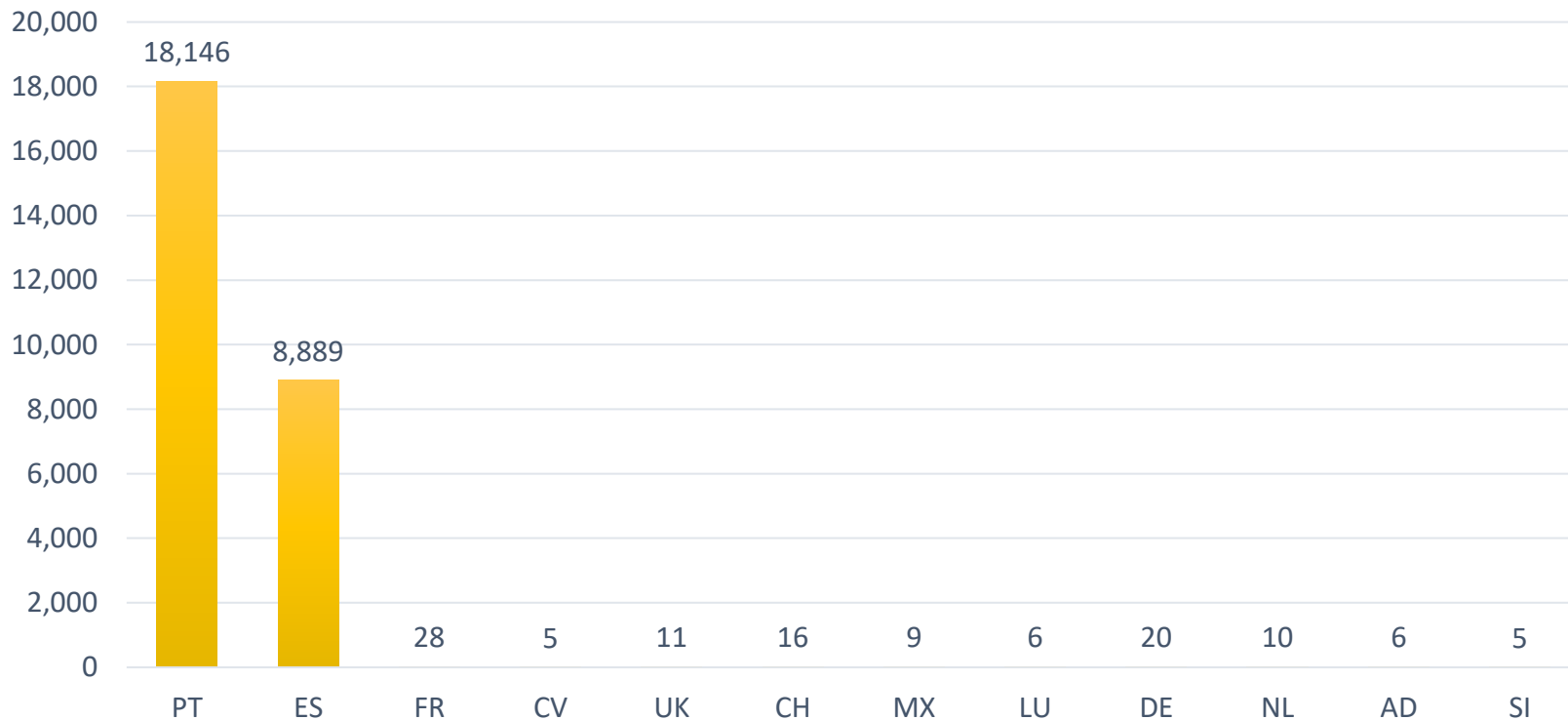
# Cidadãos espanhóis inscritos segurança social PT (SISS) por qualificação ativa



Total: **27.192**

Source: ISS, IP

# Cidadãos espanhóis inscritos segurança social (SISS) por país de morada



Dos 27.000 beneficiários (aprox), residem em PT 18.146 e em Espanha quase 9000

Source: ISS, IP



# Conceito de residência

Artigo 1.º, al. j), Reg 883/2004 / Artigo 11.º Reg 987/2009  
(**centro de interesses**)

Lugar onde a pessoa reside habitualmente (situação de facto)

- **Critérios:**

- **duração/continuidade** presença EM em causa

- **situação pessoal:** natureza/duração, atividade situação familiar, estabilidade habitação, residência fiscal...

- não havendo acordo das instituições em causa: **vontade da pessoa** (tal como revelam os factos e circunstâncias)

# Prestações

## Regras especiais para fronteiriços

### Cuidados de Saúde

- Trabalhadores e membros da família - Artigo 18.º  
Reg 883/2004
- pensionistas (ex-fronteiriços); membros da família –  
Artigo 28.º – Anexo V – Reg 883/2004
- Reembolso entre EM – Anexo III Reg 883/2004
- Serviço Nacional de Saúde – universal – residentes  
– dificuldades controlo de segurados noutra  
EM/reembolso

## Prestações

### Regras especiais fronteiriços / transfronteiriços

## Desemprego

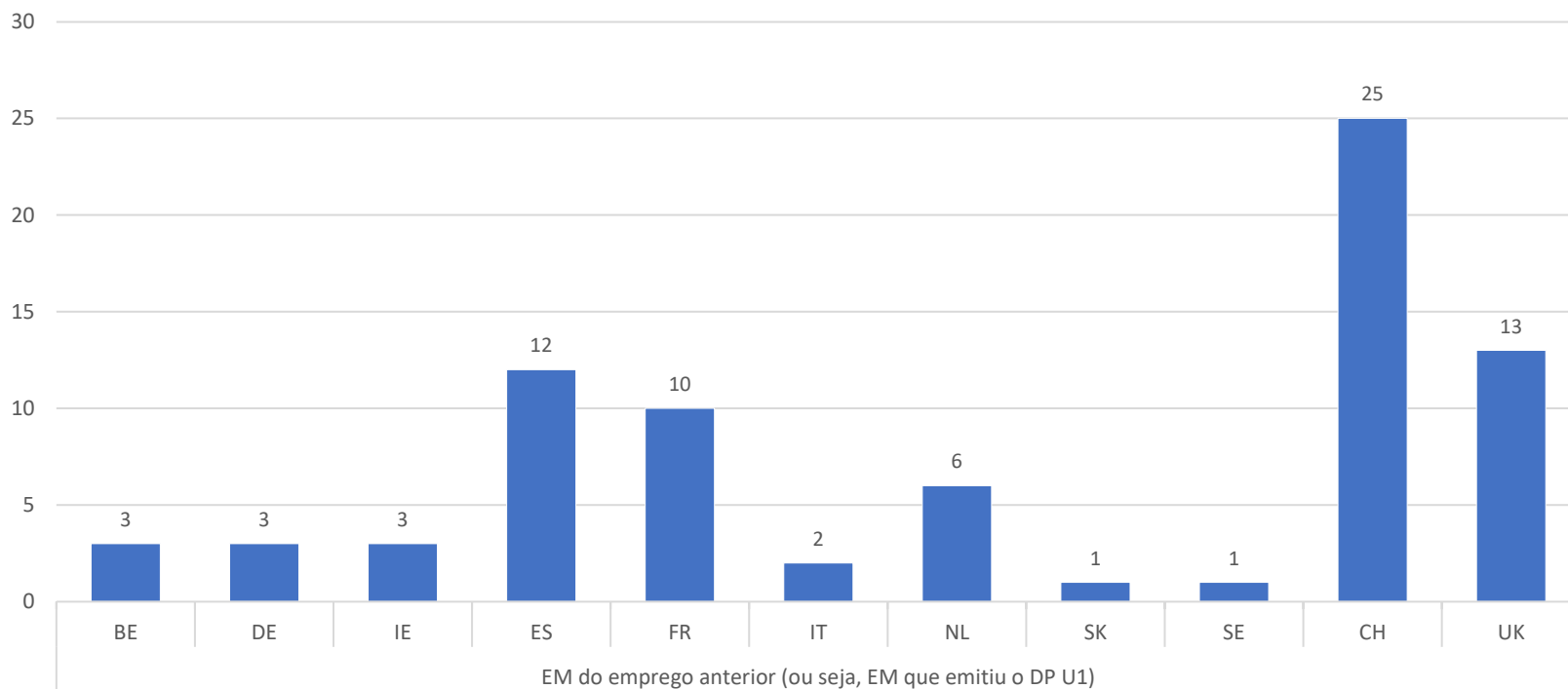
- Excepção à lex loci laboris - Artigo 65.º Reg 883/2004 - EM residência competente
- Fronteiriços – desemprego total – sem direito opção
- Transfronteiriços – (pretensão) direito de opção
- Procura de emprego – direitos suplementares
- Totalização – cálculo
- Reembolso entre EM – Art. 70.º Reg 987/2009
- **Revisão – competência partilhada?**

# Alguns dados recentes sobre a aplicação dos Regs europeus em Portugal

- Prestações de desemprego – totalização – procura de emprego – exportação – reembolsos
- Prestações familiares - exportação
- Pensões - exportação

# Número de casos de totalização para abertura direito em Portugal – 2021 (DPU1 recebidos - 79)

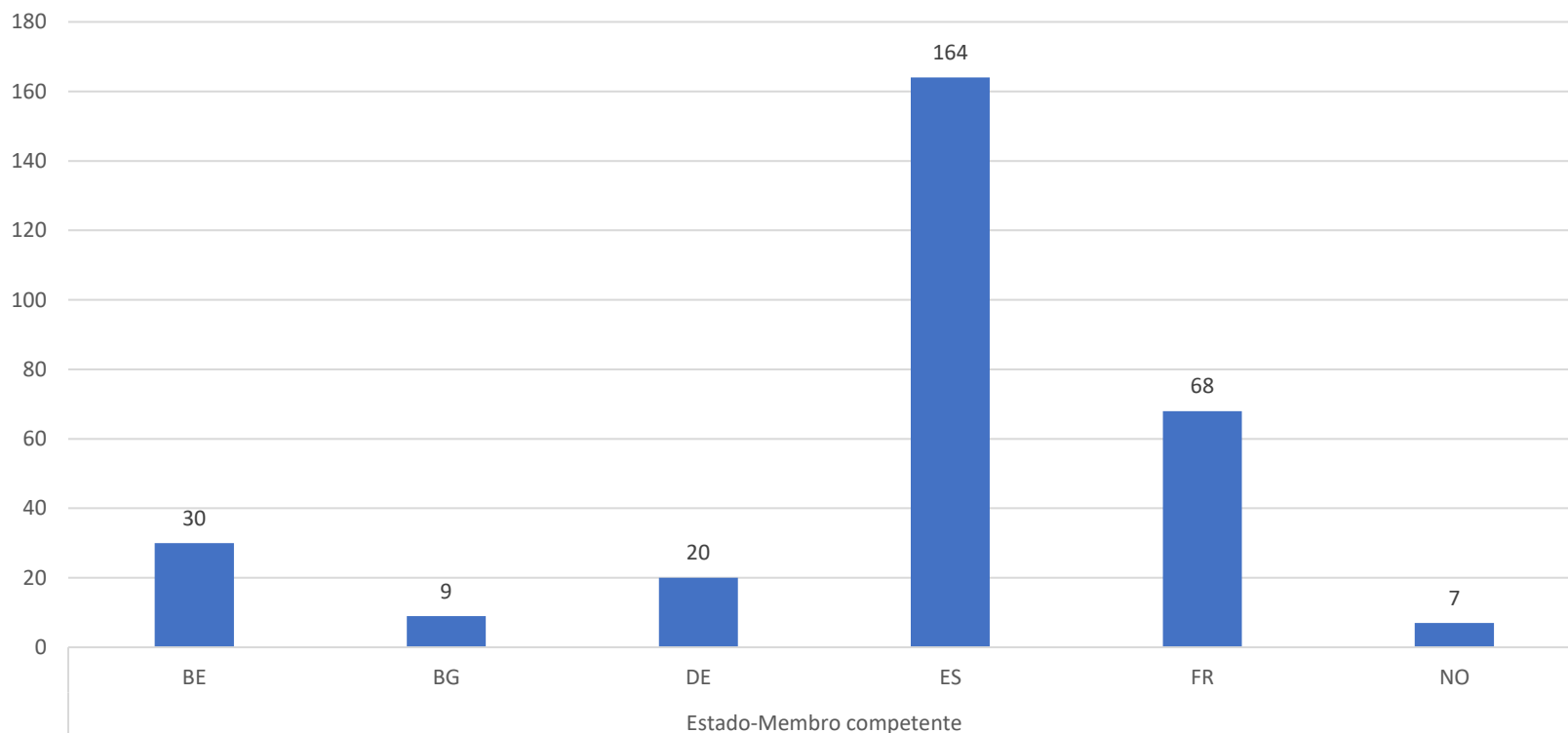
EM competente Portugal



Source: Annual reports on EU social security coordination

# Número de casos de totalização para abertura direito noutro EM – 2021 (DPU1 emitidos - 371)

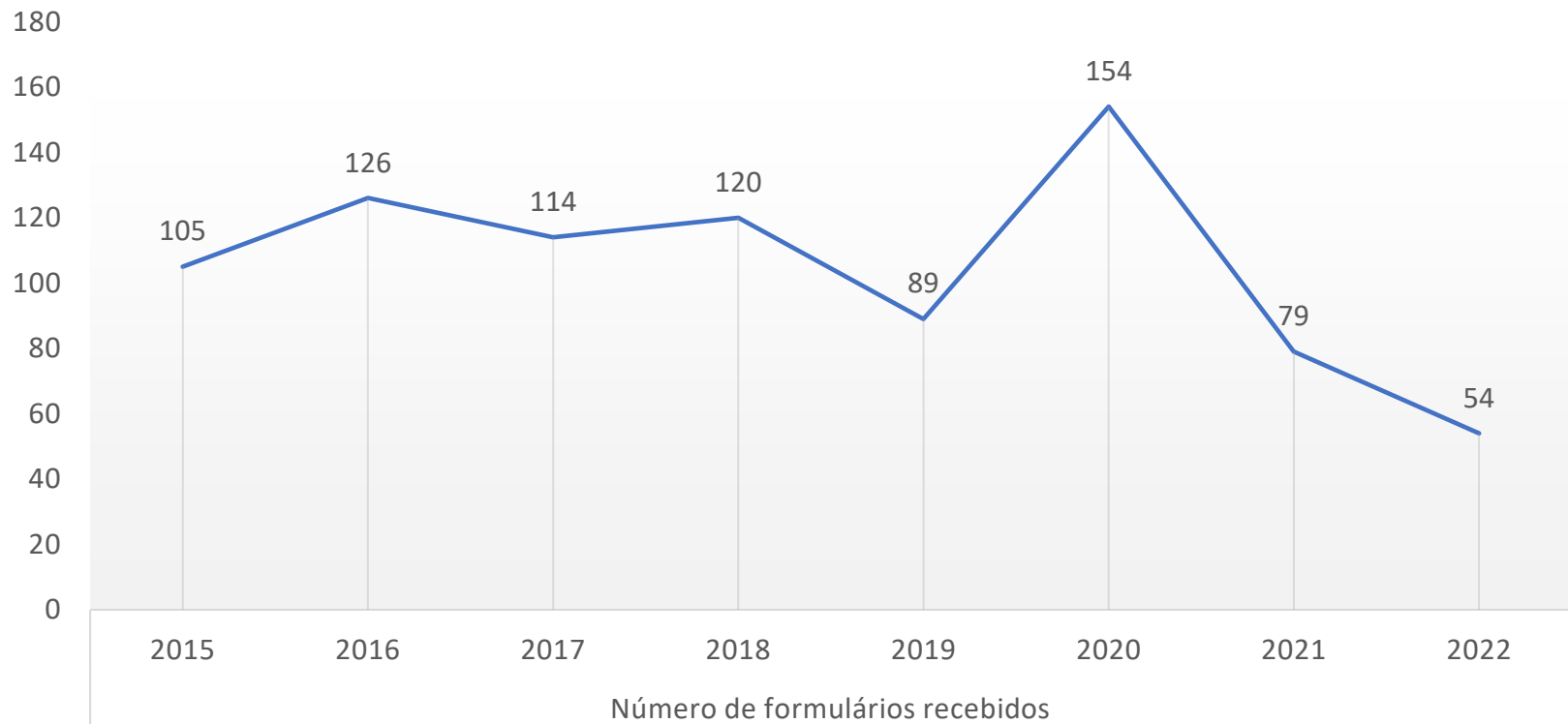
EM do emprego/seguro anterior - Portugal



Source: Annual reports on EU social security coordination

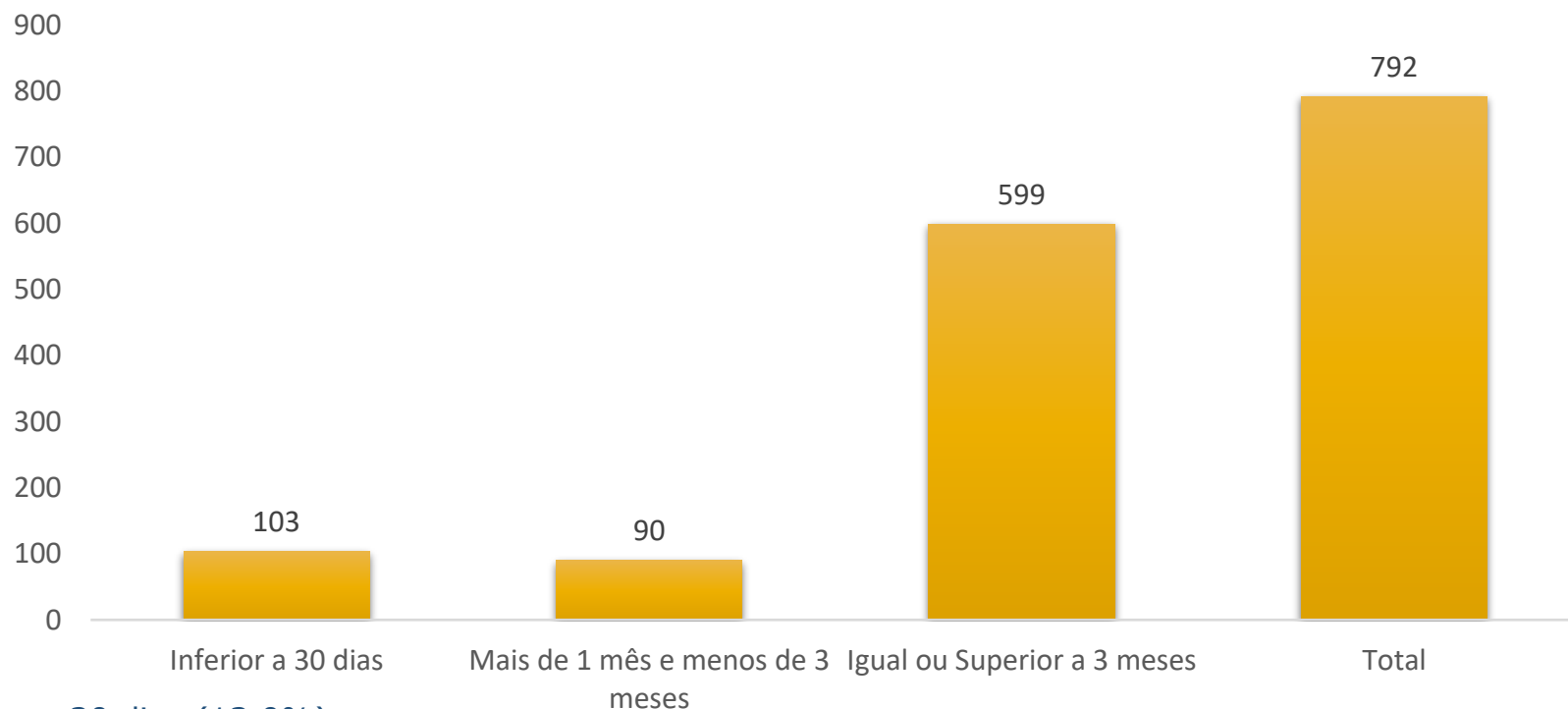
# Evolução do número de DP U1 recebidos, 2013-2022

## Portugal



Source: Annual reports on EU social security coordination + ISS, IP (2022)

# Totalização de períodos de desemprego por duração do seguro / emprego em Portugal - 2021



< a 30 dias (13.0%)

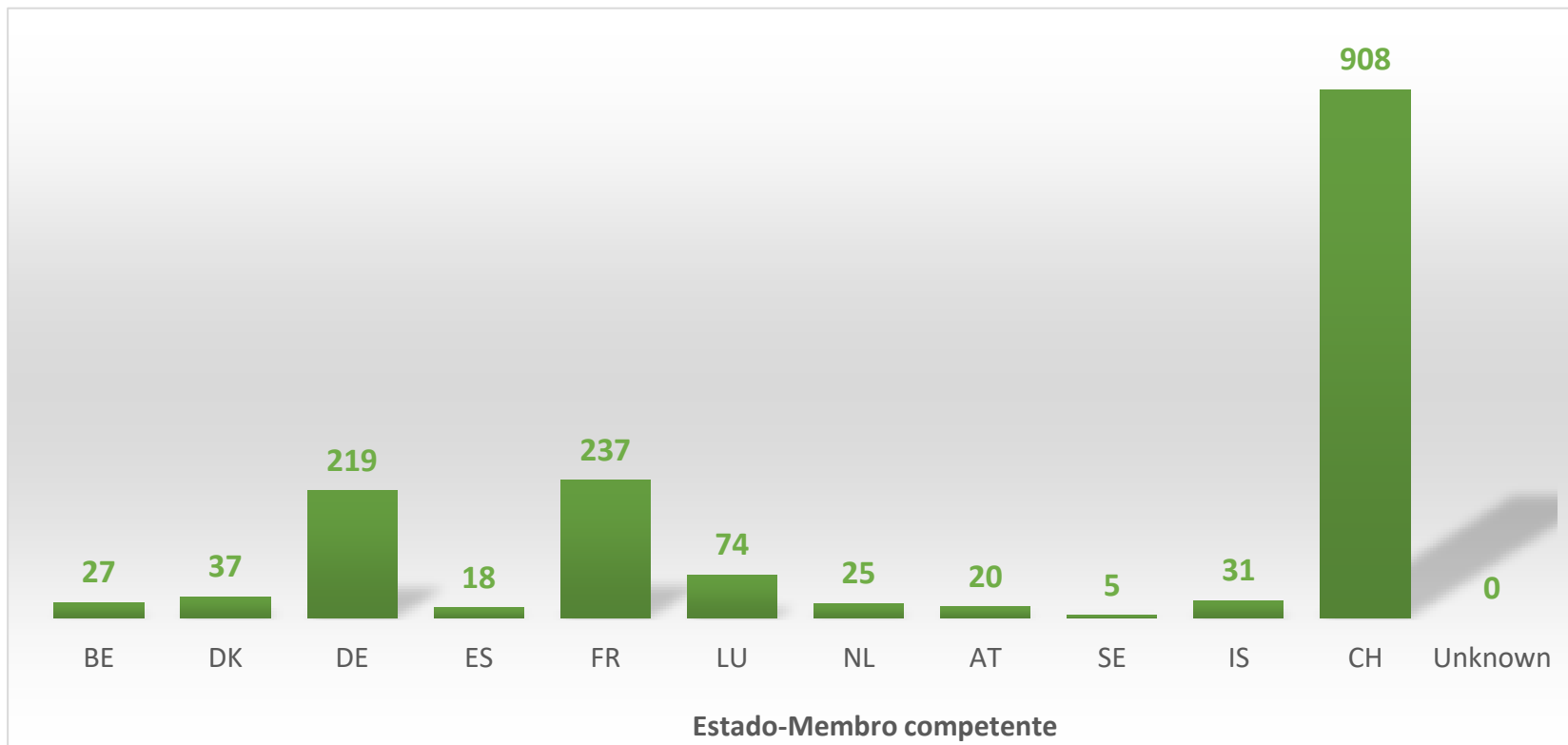
Mais de 1 mês e menos de 3 meses (11,4%)

Igual ou Superior a 3 meses (75,6 %)

Source: Annual reports on EU social security coordination

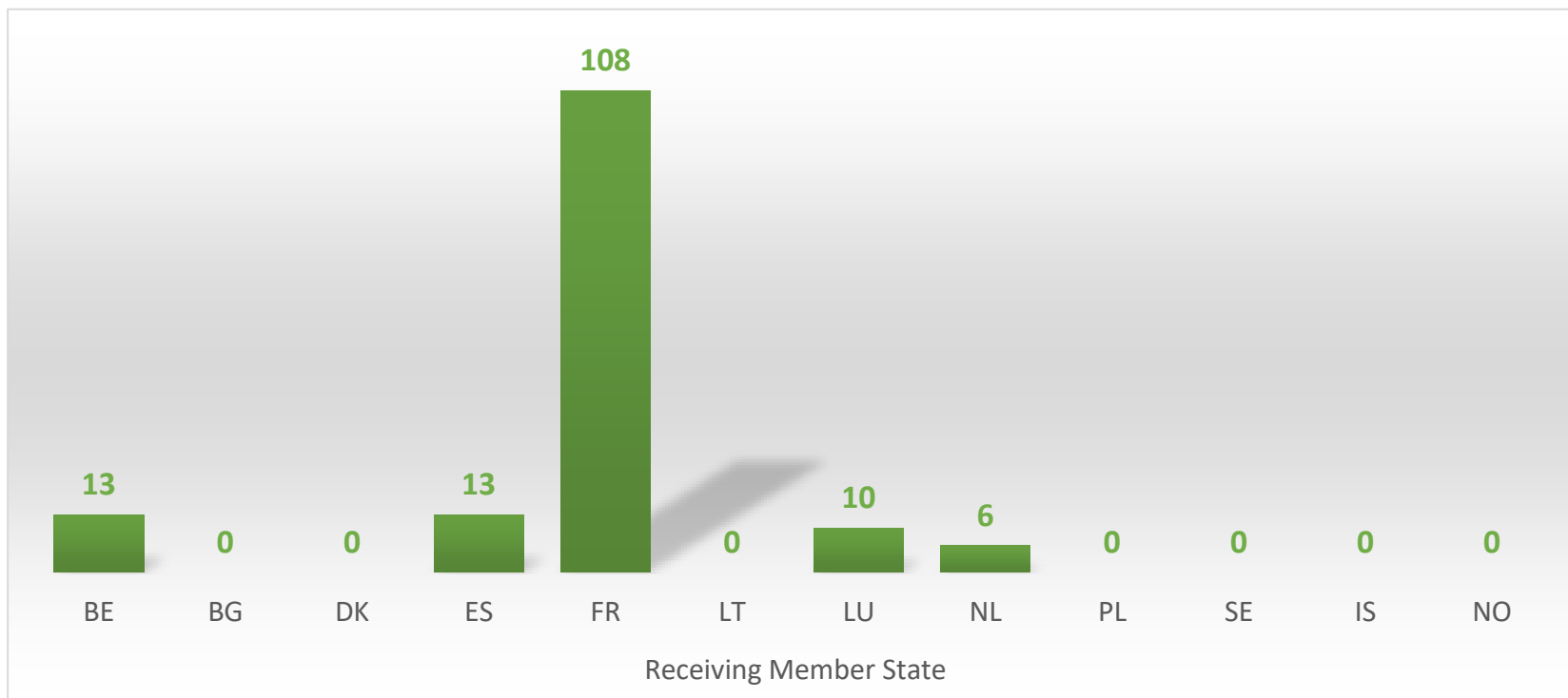


# Exportação - DPU2/SEDU008 recebidos por Portugal por EM competente – 2021 (1616)



Source: Annual reports on EU social security coordination

# Exportação -DPU2/SEDU008 emitidos por Portugal por EM destino – 2021 (202)

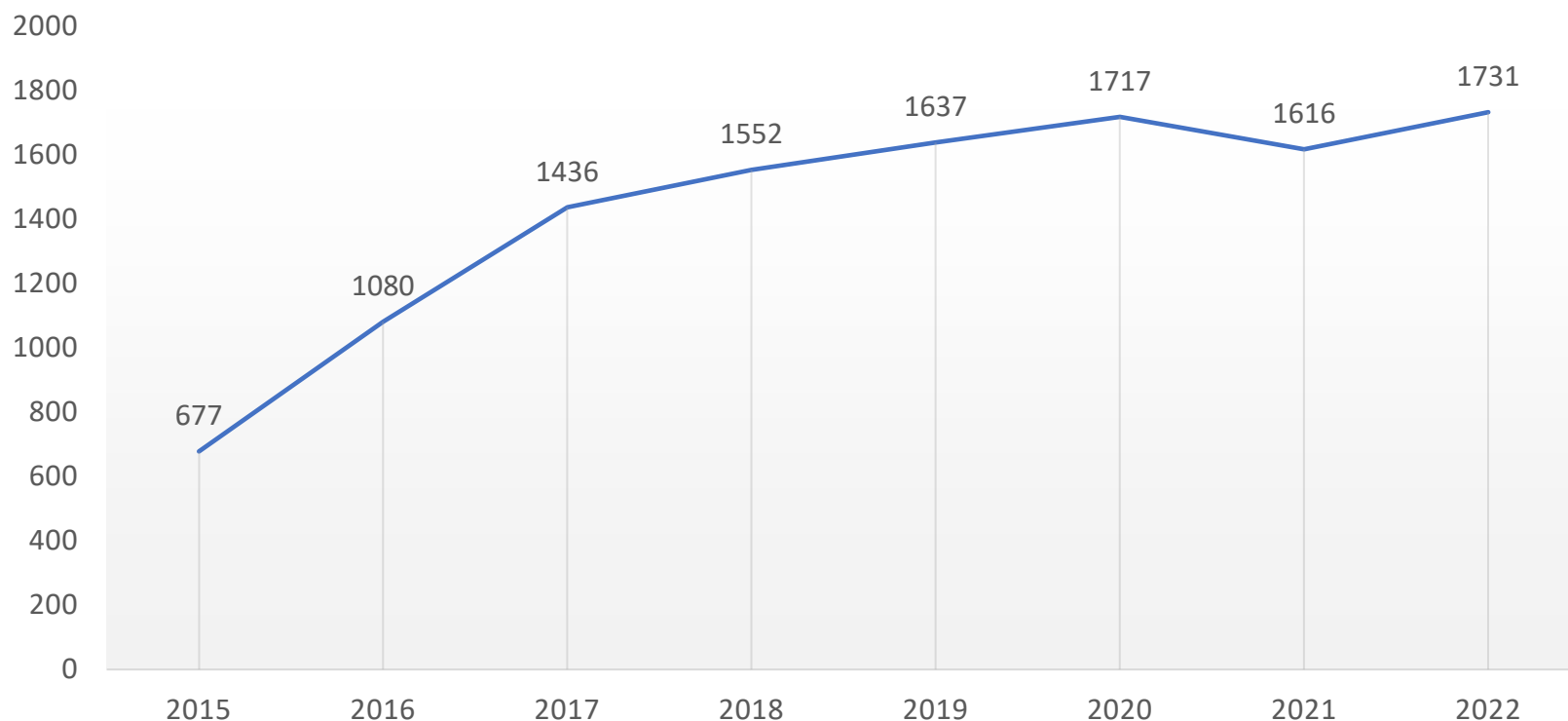


EM com valor 0 = <5

Source: Annual reports on EU social security coordination

# Evolução do número de DP U2 recebidos, 2015-2022

Portugal

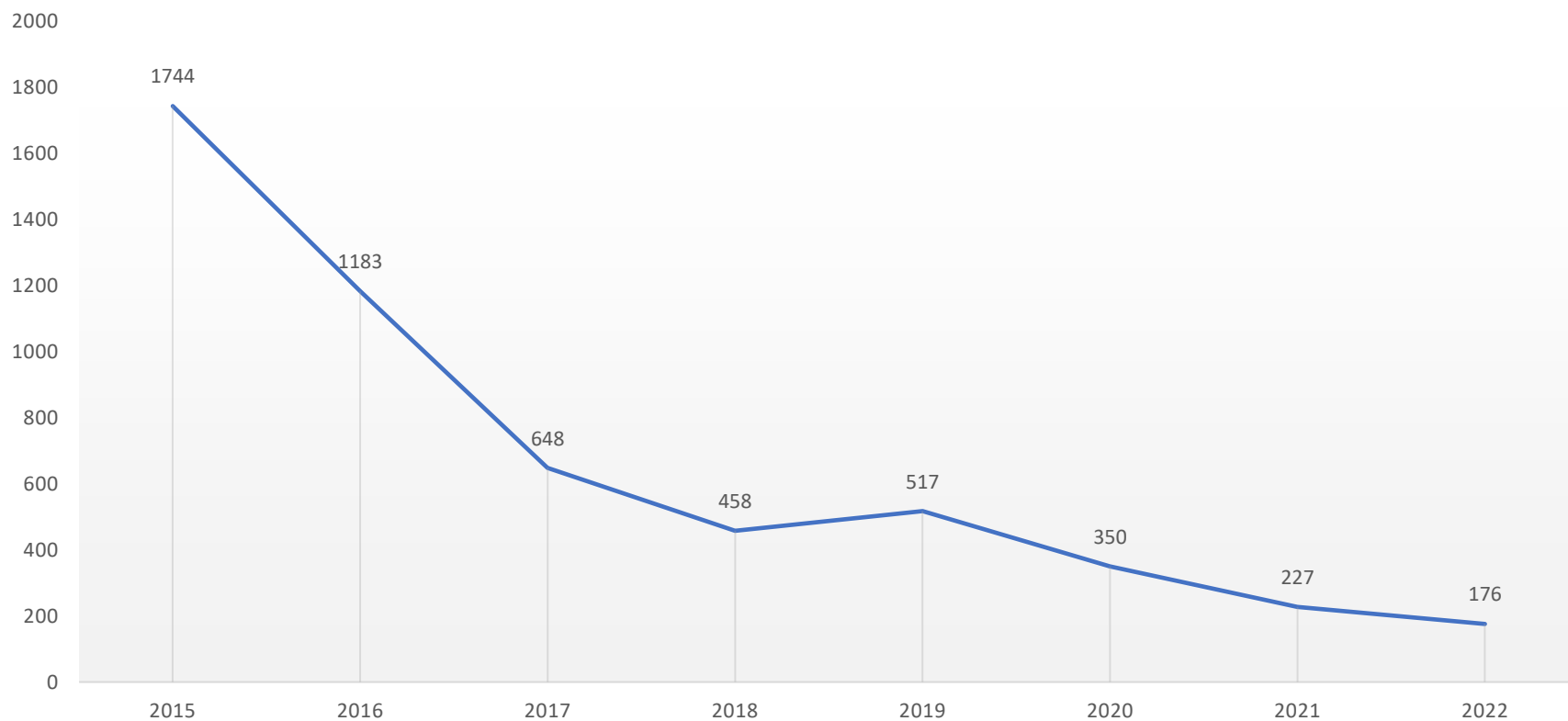


% de variação 2020-2021 é de (-5.9 %)

Source: Annual reports on EU social security coordination + IEFP, P (2022)

# Evolução do número de DP U2 emitidos, 2015-2022

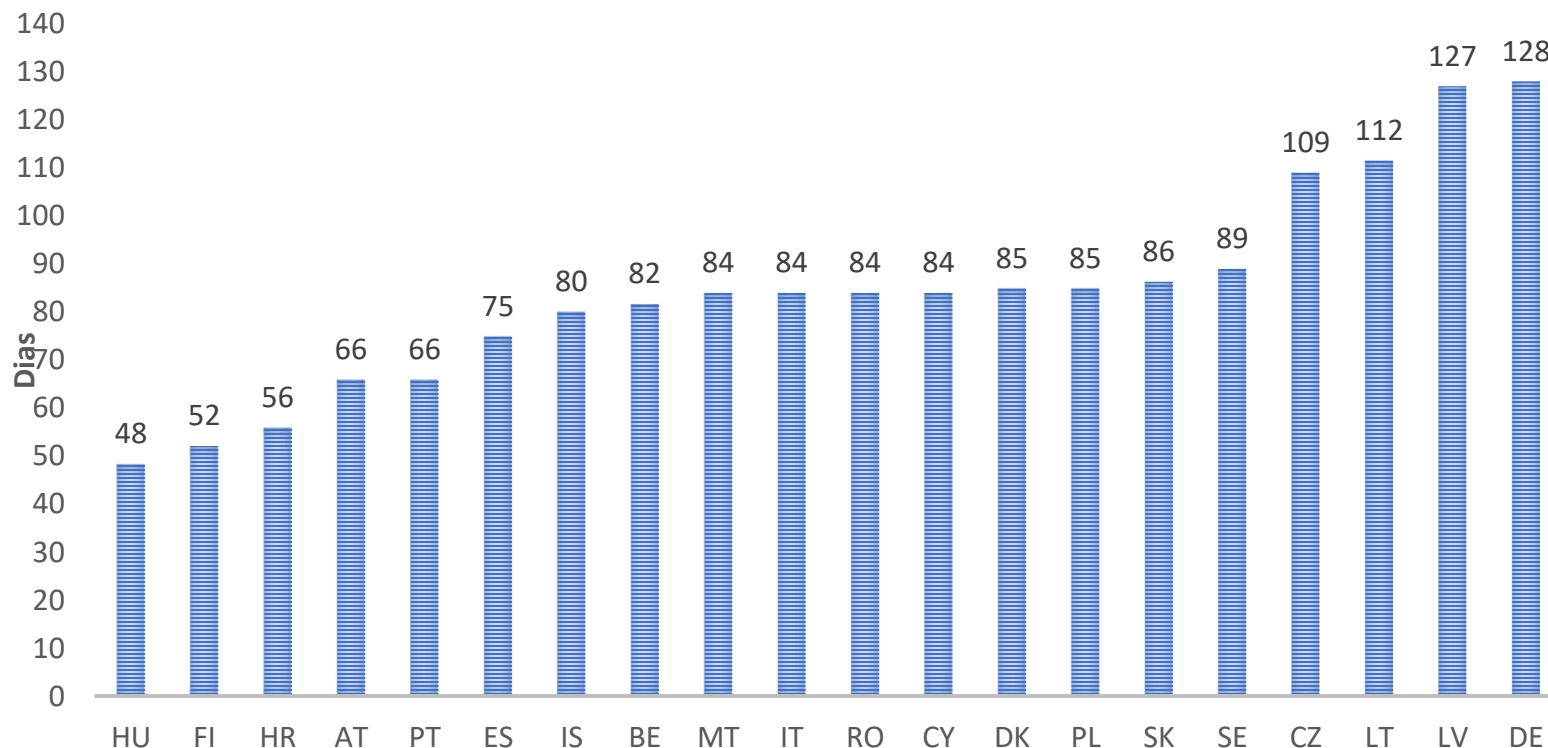
Portugal



% de variação 2020-2021 é de (-35.1%)

Source: Annual reports on EU social security coordination + ISS, IP (2022)

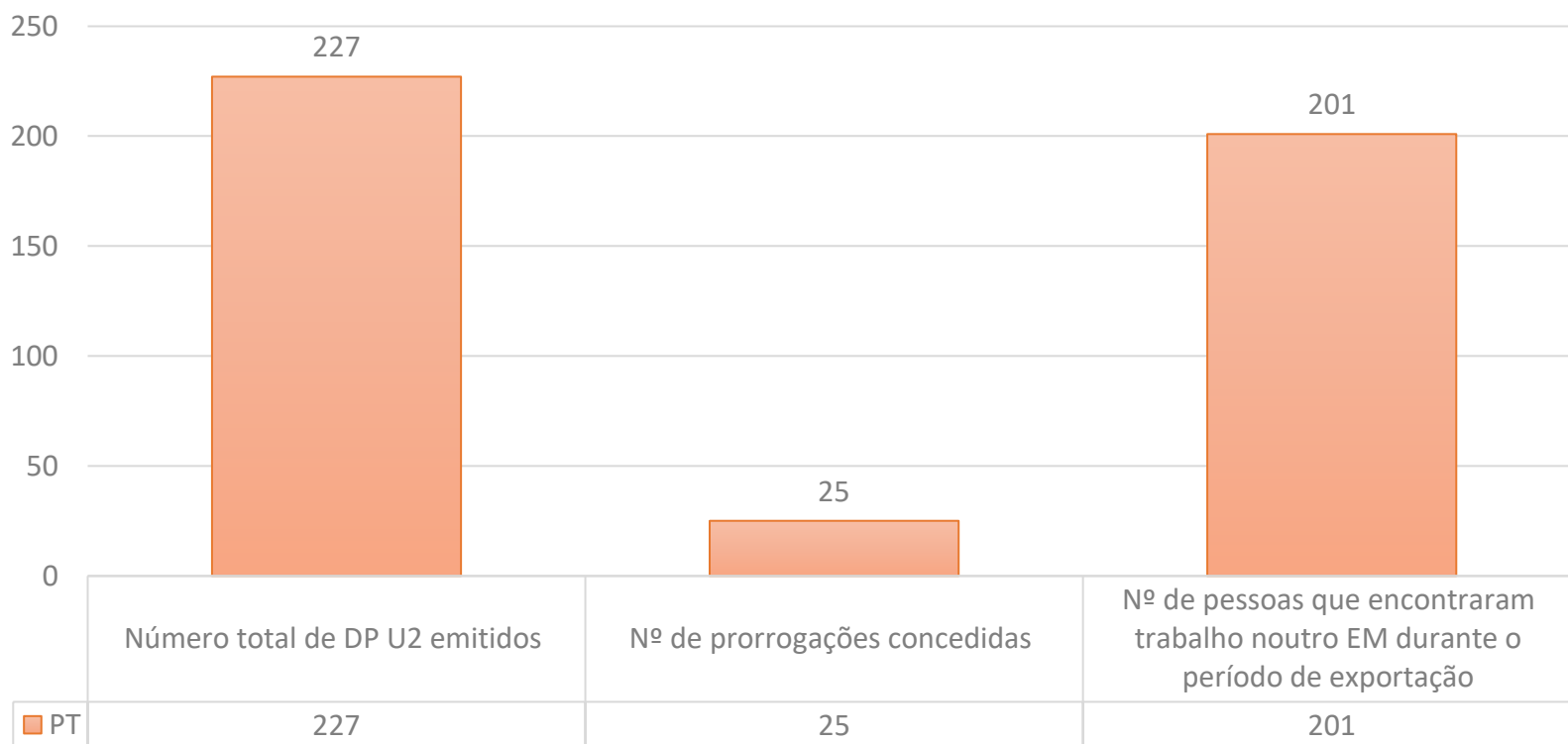
# Período médio de exportação prest desemprego em dias - 2021



Source: Annual reports on EU social security coordination

# Nº de pessoas desempregadas portadoras de DP U2 que encontraram trabalho noutro EM – 2021

Portugal

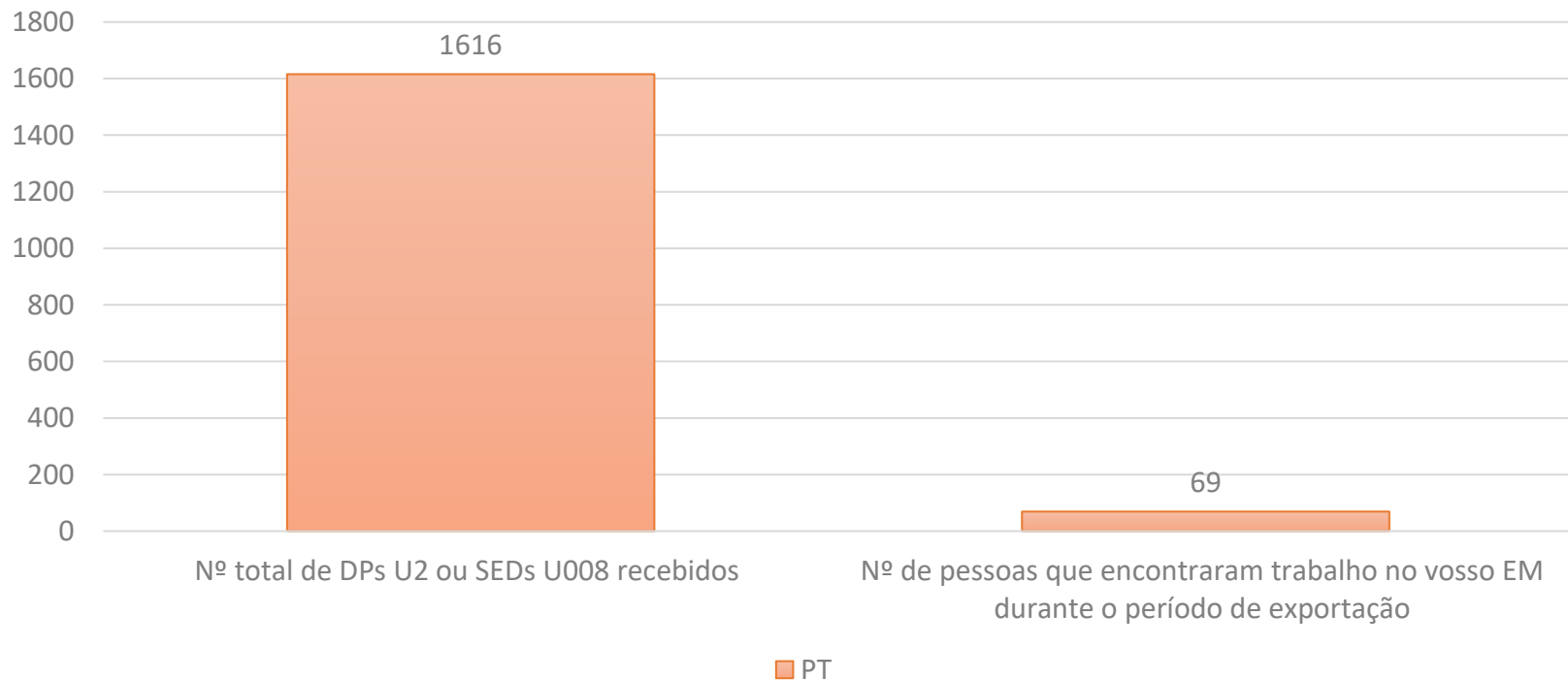


**Taxa de sucesso Total 88,5%**

Source: Annual reports on EU social security coordination + ISS, IP (2022)

# Nº de pessoas desempregadas portadoras de DP U2 que encontraram trabalho em Portugal – 2021

Portugal

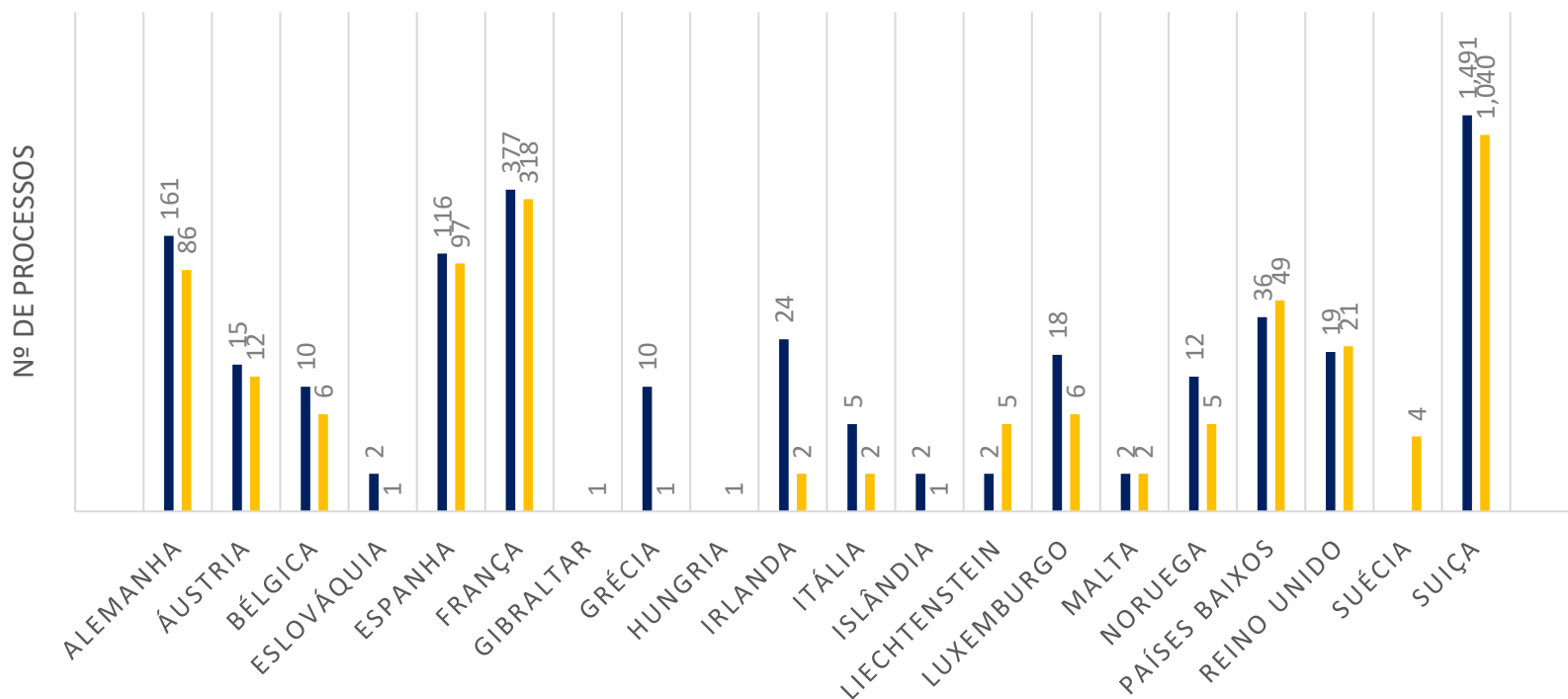


Taxa de sucesso Total 4.3 %

Source: Annual reports on EU social security coordination + ISS, IP (2022)

# Pedidos de reembolso prest desemprego feitos a outros EM (2019 e 2022) por nº de processos

■ 2019 ■ 2022

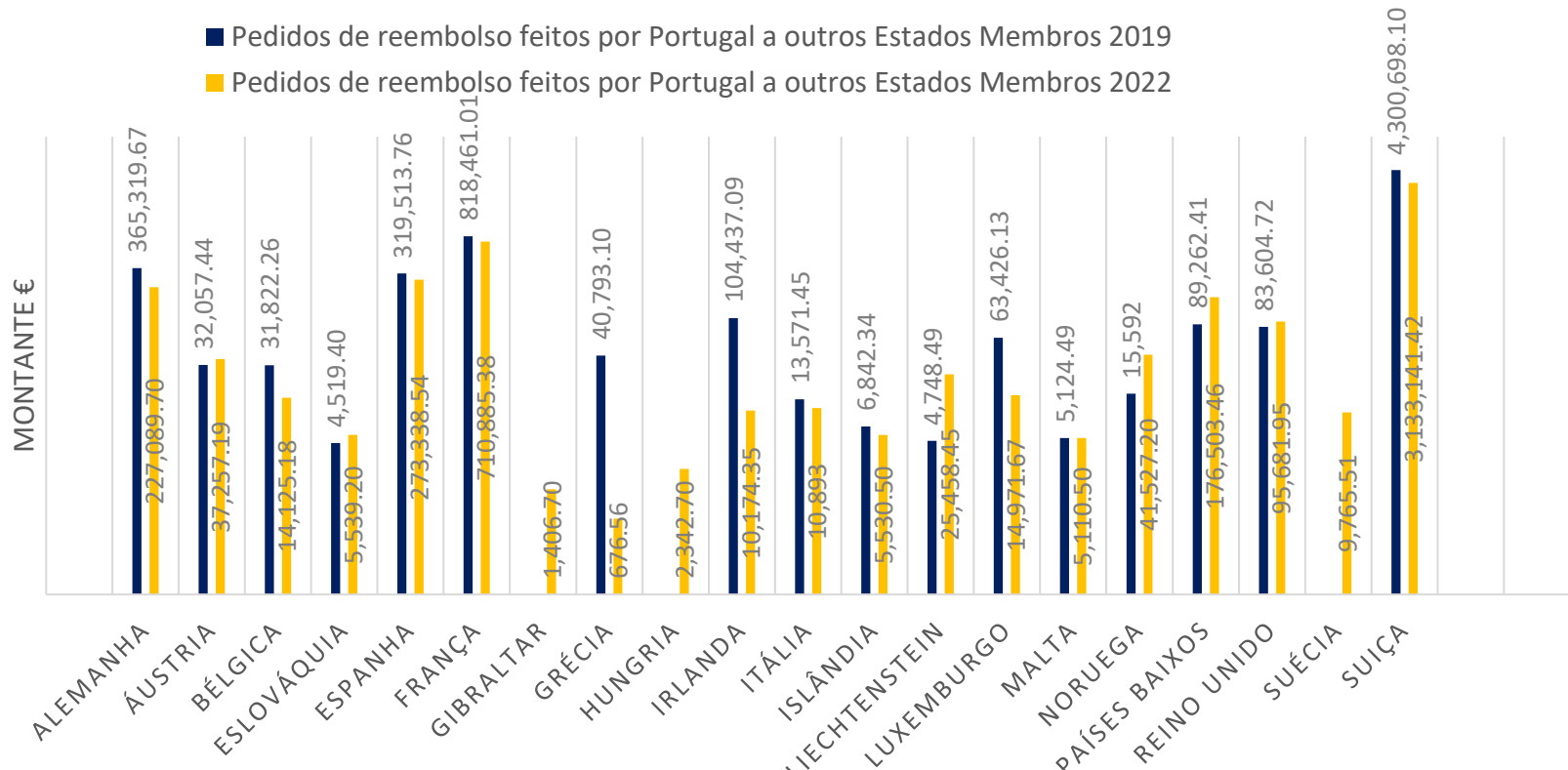


No ano de 2019 o nº pedidos de reembolso feitos por Portugal a outros EM foi de 2.302  
 No ano de 2022 o nº pedidos de reembolso feitos por Portugal a outros EM foi de 1.660

Source: ISS, IP



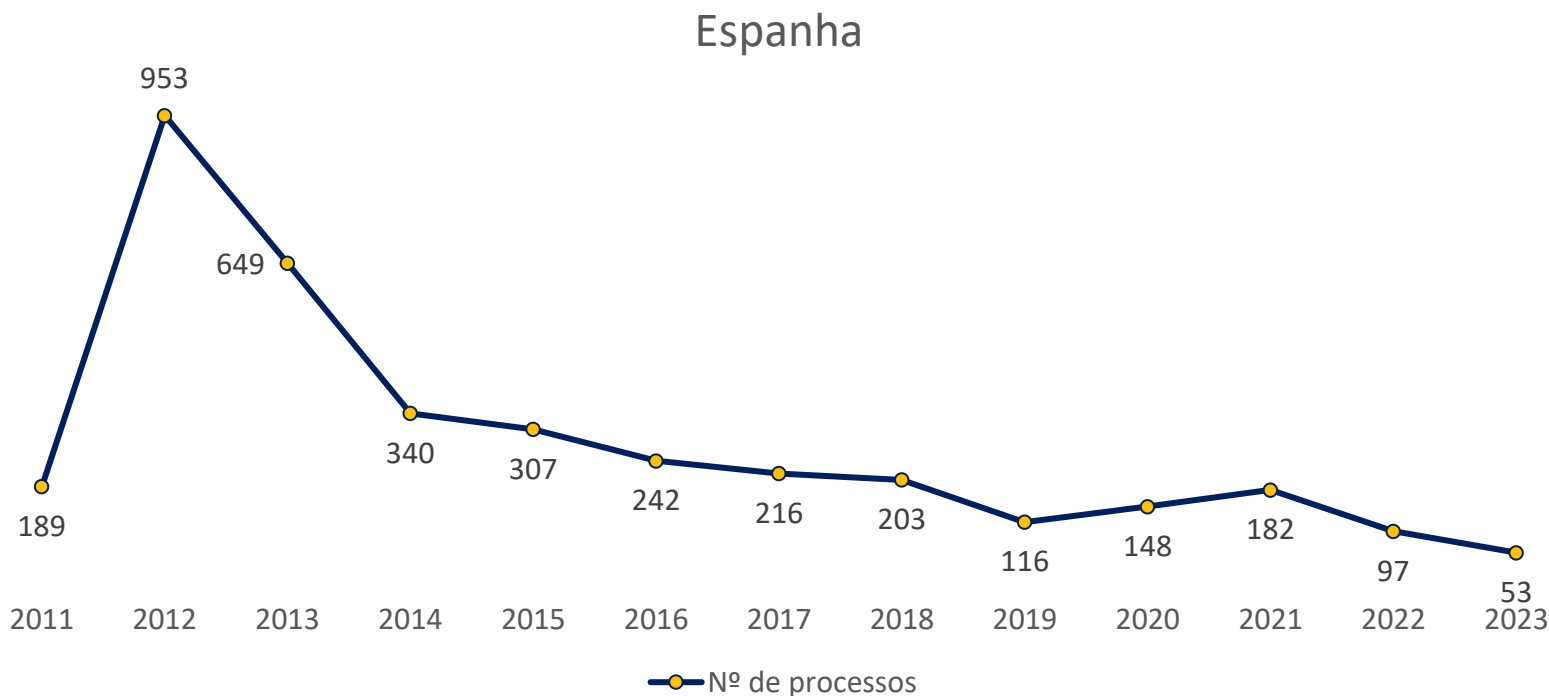
# Pedidos de reembolso prest desemprego feitos a outros EM (2019 e 2022) por montantes (€)



Em 2019, o valor total de pedidos de reembolso feitos por Portugal a outros EM foi de 6.299.739,86€. Em 2022 esse valor foi de 4.801.419,16€

Source: ISS, IP

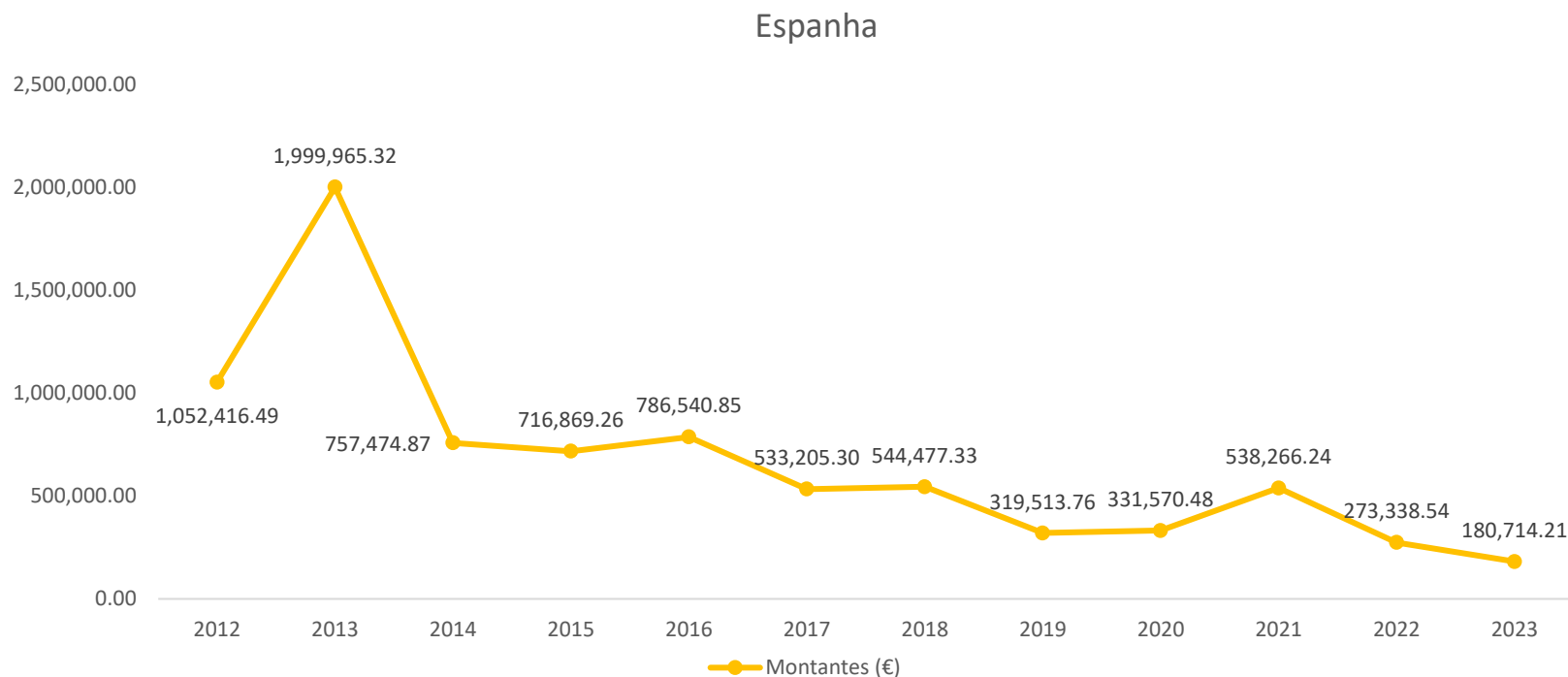
# Pedidos reembolso prestações desemprego feitos por Portugal a Espanha - nº de processos



Entre 2011 e 2023, o nº total de pedidos de reembolso feitos por Portugal a Espanha foi de 3695

Source: ISS, IP

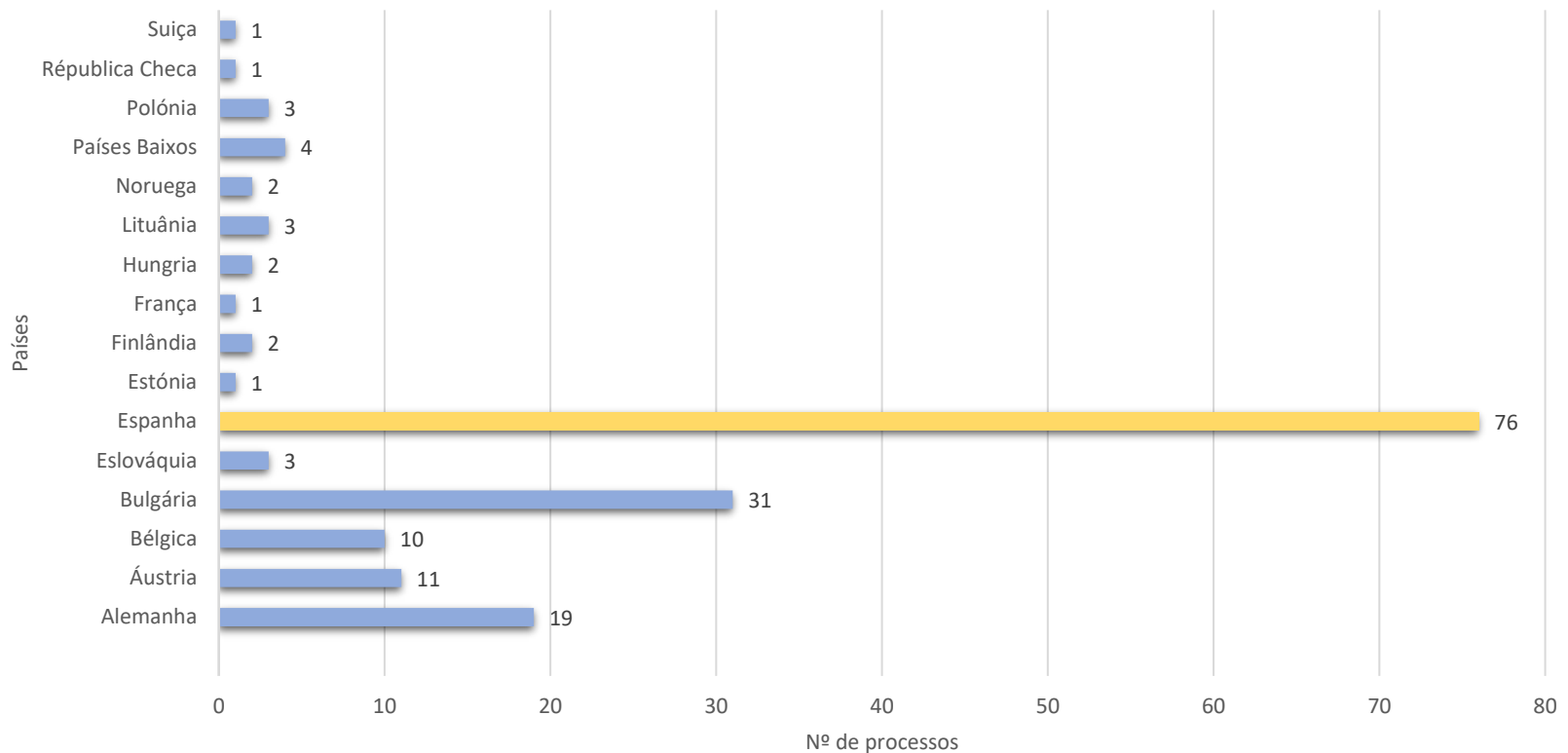
# Pedidos reembolso prestações desemprego feitos por Portugal a Espanha - montante (€)



Entre 2012 e 2023, o valor total dos pedidos de reembolso feitos por Portugal a Espanha foi de 8.034.352,65 €. No ano de 2011 não há dados disponíveis.

Source: ISS, IP

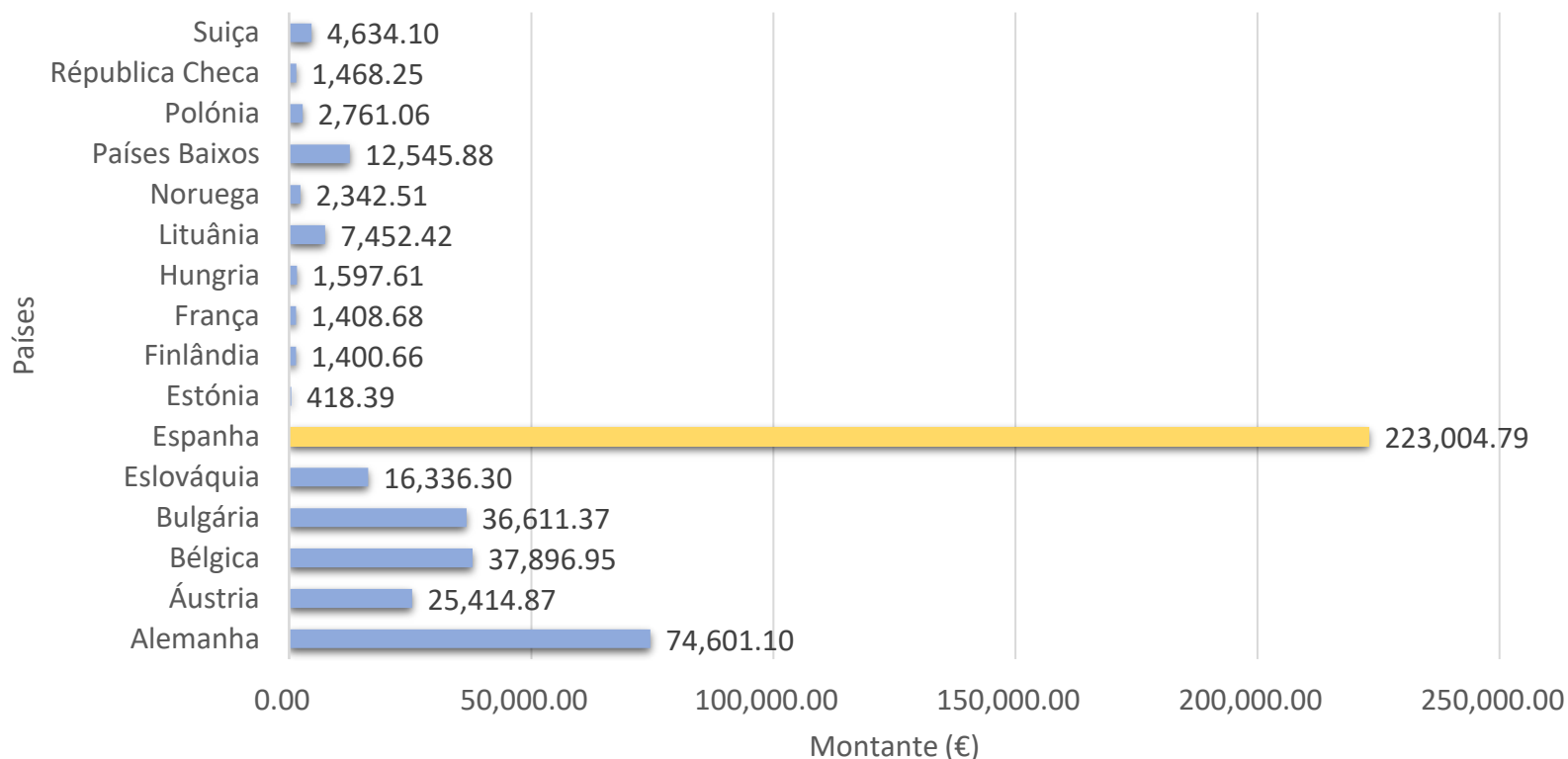
# Pedidos reembolso prestações desemprego feitos pelos EM a Portugal - 2022 - nº de processos



Em 2022 o nº total de pedidos de reembolso feitos pelos EM a Portugal foi de 170

Source: ISS, IP

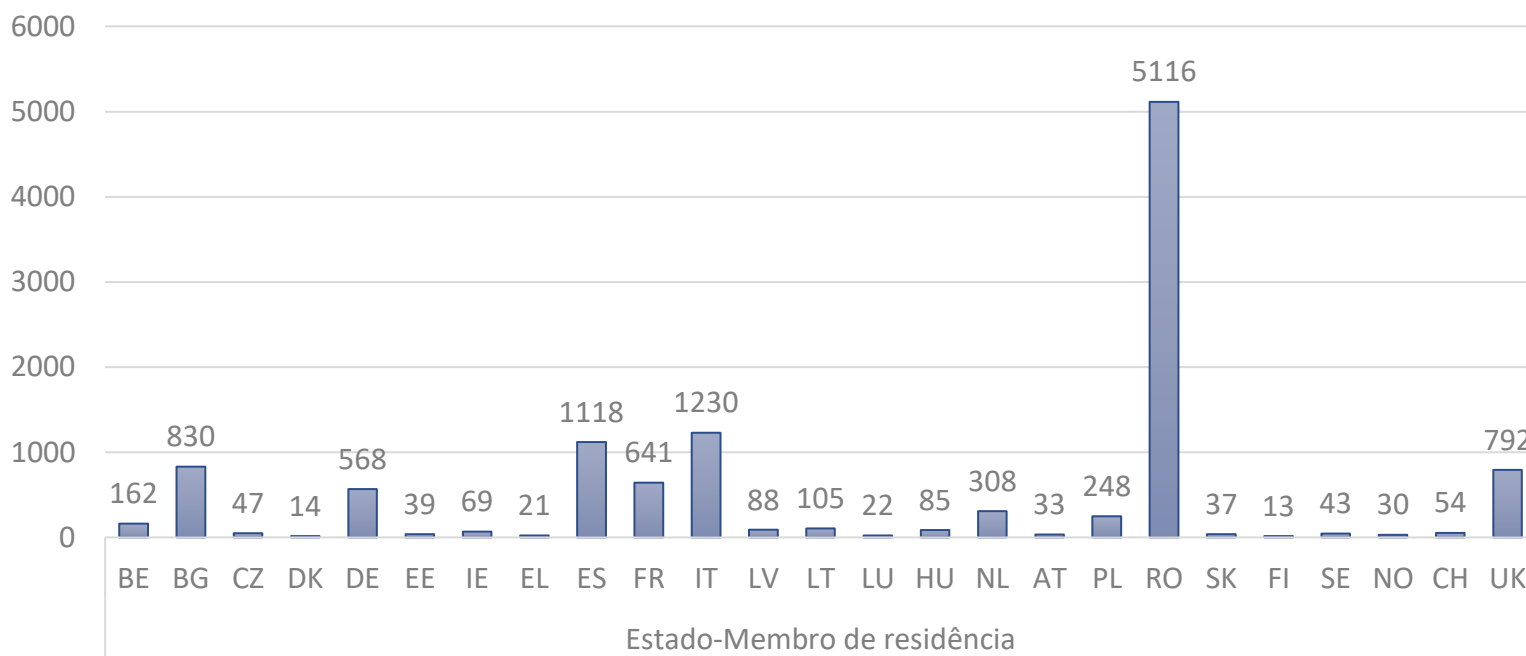
# Pedidos reembolso prestações desemprego feitos pelos EM a Portugal - 2022 - por montante (€)



Em 2022 o valor total dos pedidos de reembolso feitos a Portugal foi de 449.894,94€

Source: ISS, IP

# Prestações Familiares exportadas por Portugal - 2021 - n.º membros da família

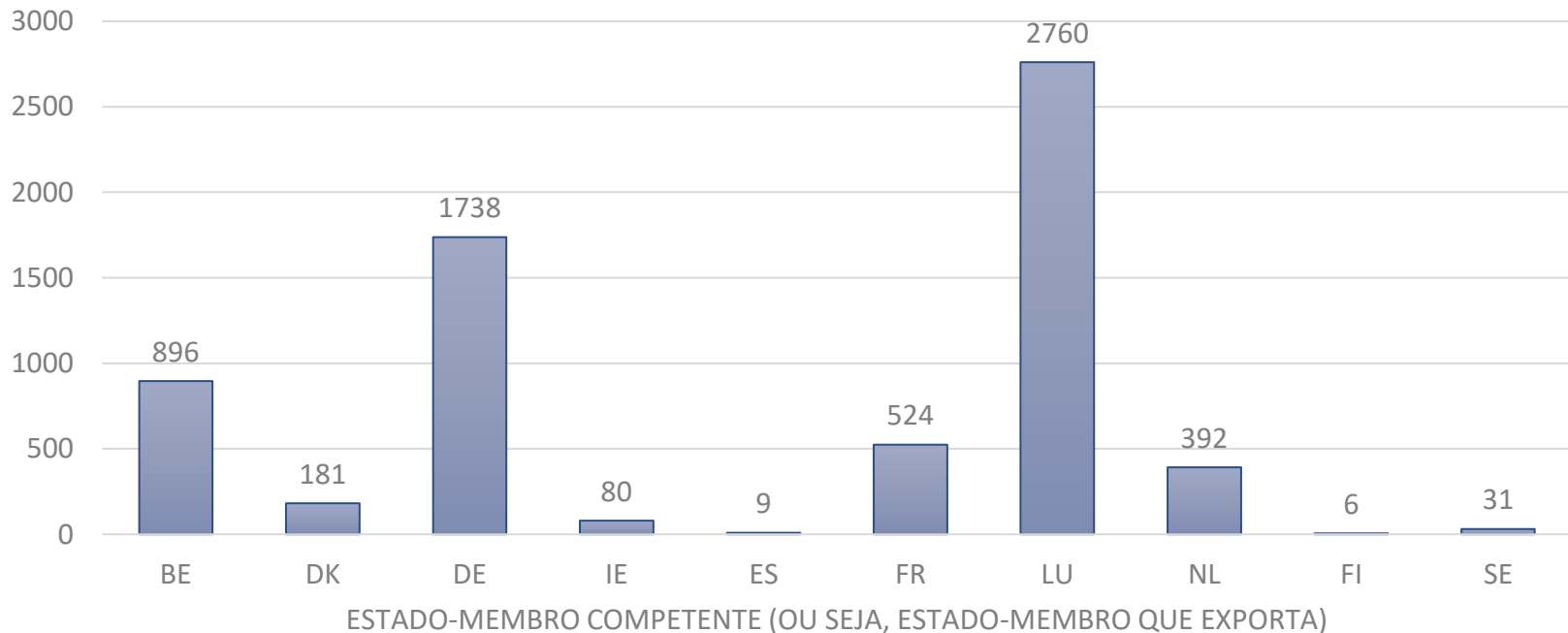


Em 2021 o n.º total de prestações familiares exportadas por PT foi de 11.727

Source: Annual reports on EU social security coordination

# Prestações Familiares exportadas para Portugal - 2021 - n.º membros da família

Estado-Membro de residência - Portugal

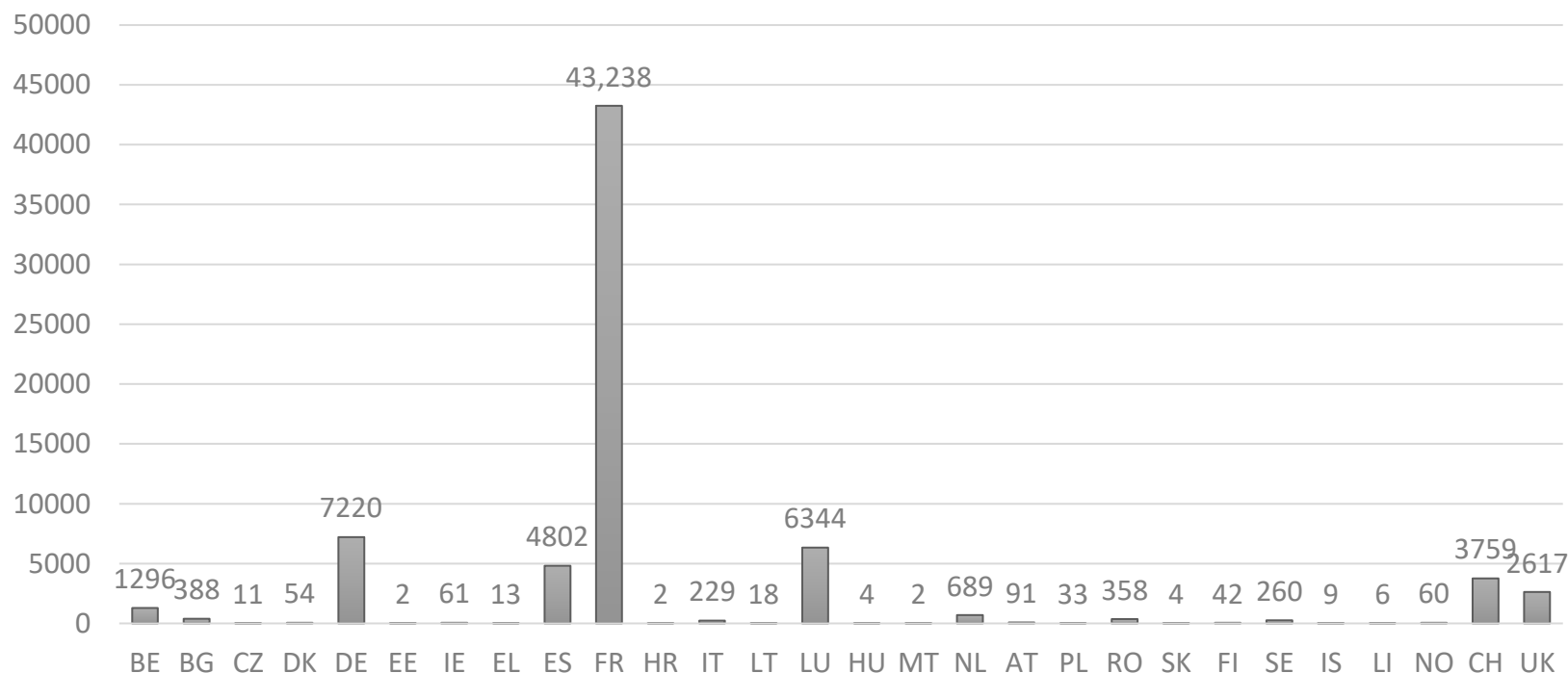


Restantes EM <5 – N.º Total não disponível

Source: Annual reports on EU social security coordination

# N.º pensões exportadas por PT para residentes noutro EM - todos os tipos de pensões - 2021

## Portugal



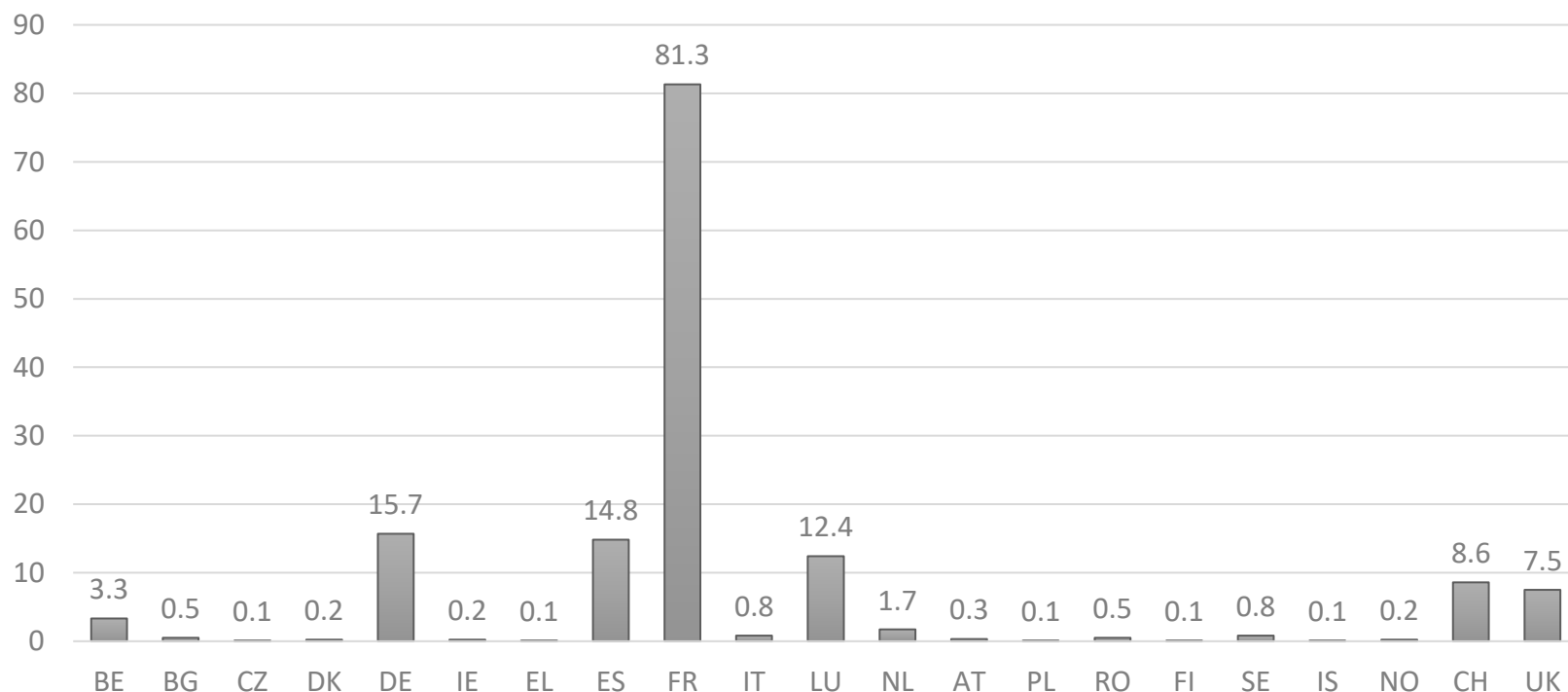
Total de pensões exportadas de Portugal: **71 612 pensões**

Source: Annual reports on EU social security coordination



# Montante exportado por PT para residentes noutro EM - todos os tipos de pensões – 2021-M€

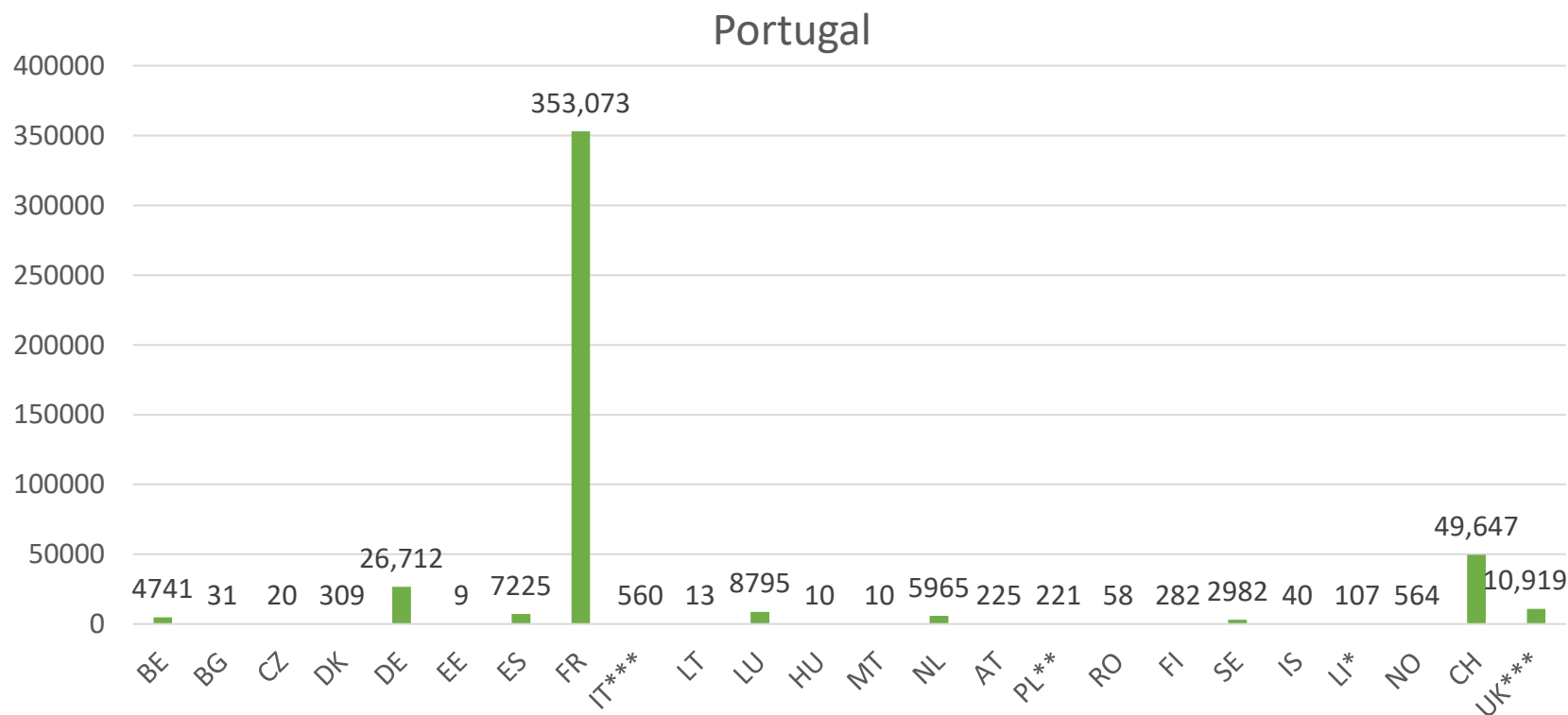
Portugal\*



\*Montantes mensais multiplicados por 12

Source: Annual reports on EU social security coordination

# N.º pensões exportadas por outro EM para residentes PT - todos os tipos de pensões - 2021



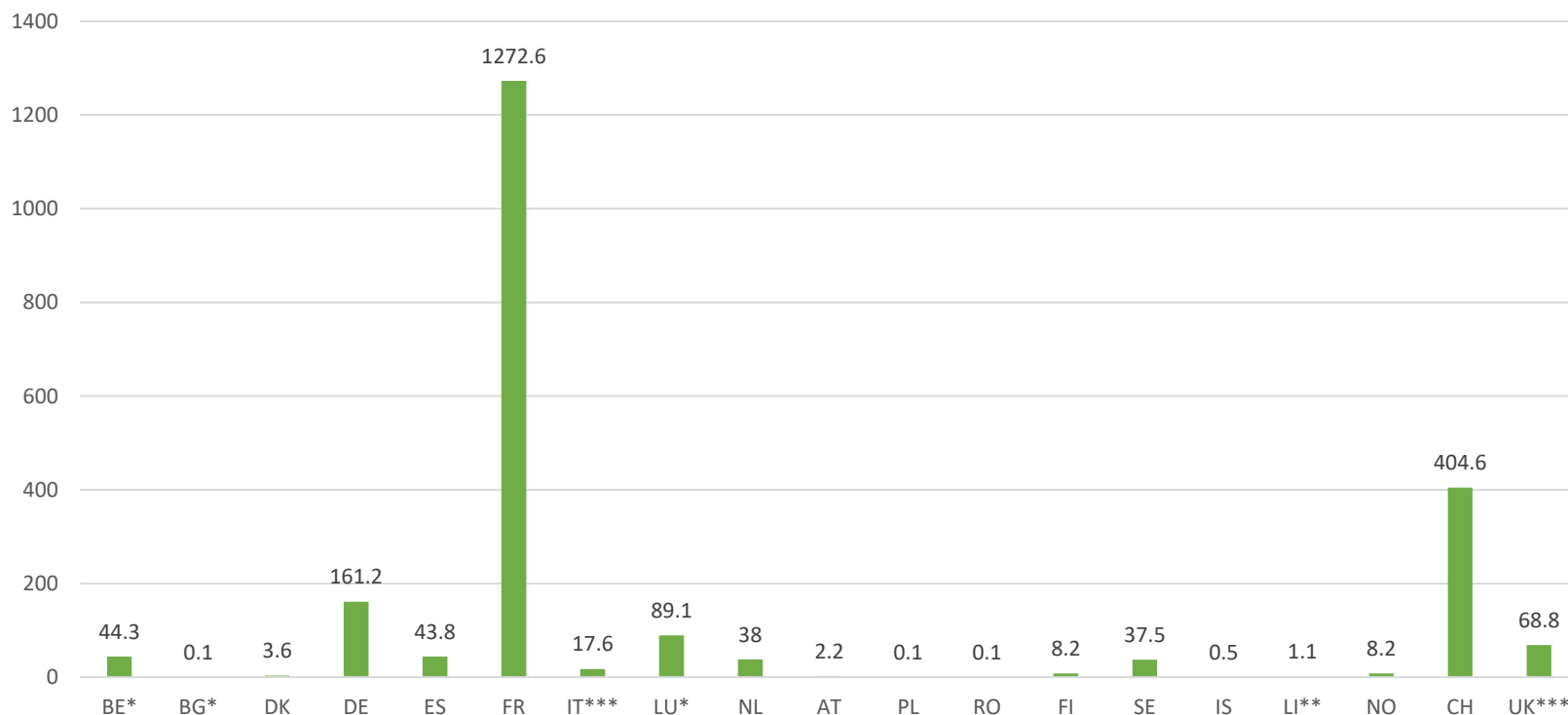
\*\*\* IT: dados referentes a 2016. UK: dados referentes a 2018.

\*\* PL: os dados referem-se ao número de pensões e não de pessoas.

**Total de pensões recebidas em Portugal 472.532 pensões**

Source: Annual reports on EU social security coordination

# Montante exportado por outro EM para residentes PT - todos os tipos de pensões – 2021 – M€



Os montantes obtidos pela BE (excepto invalidez), BG, LU, HU, PT, e SI foram multiplicados por 12 para obter um valor anual.

\*\* Os dados relativos a HR e MT apenas dizem respeito à exportação para pensionistas que recebem uma pensão de dois ou mais Estados-Membros. Os dados relativos a LI apenas dizem respeito à exportação para pensionistas que recebem uma pensão de um único Estado-Membro.

\*\*\*IT: dados referentes a 2016. CY: dados referentes a 2020. UK: dados referentes a 2018

Source: Annual reports on EU social security coordination

# Coordenação/Cooperação Portugal-Espanha

## **MOUs – Ministérios homólogos**

actividades de coordenação/cooperação  
desde 2013-2014 ... - 2023-2024

- **Actividades permanentes:**

- articulação de posições nas diversas sedes onde são discutidas matérias de coordenação de sistemas de segurança social, tendo em vista avaliar interesses/posições comuns
- Reuniões regulares e/ou comunicações entre peritos destinadas a tratar em conjunto questões jurídicas relativas à interpretação e aplicação de instrumentos internacionais, que sejam de interesse comum
- Fórum sobre Dimensão Externa da Comissão Administrativa para a Coordenação dos Sistemas de Segurança Social

# Coordenação/Cooperação Portugal-Espanha

- **Actividades específicas:**

- Legislação aplicável
- Intercâmbio de dados sobre pensionistas para verificação de óbitos
- Controlo residência
- Verificação direito a suplementos pensão no EM residência
- Determinação EM responsável pela cobertura dos custos de cuidados de saúde
- Controlo acumulação desemprego/actividade
- Acumulação desemprego / actividade a tempo parcial –  
Recomendação U1
- **Retoma reuniões / projectos 2024**

# Coordenação/Cooperação Portugal-Espanha

- Guia Prático do Trabalho Fronteiriço entre Portugal e Espanha (2022)
- Instrumento dinâmico – alterações 2023



# Coordenação/Cooperação Portugal-Espanha Casos práticos – alguns exemplos

## Prestações familiares

- actividade em Espanha – residência dos membros da família em Portugal
- EM competente Espanha – art.º 11.º/3 a)
- ausência de direito no EM competente – direito no EM residência?
- Caso *Bosmann* (Proc. C-352/06, de 20/5/2008)

# Coordenação/Cooperação Portugal-Espanha

## Medidas de apoio às famílias - creches gratuitas

- protocolos cooperação com IPSS/outros - gratuidade
- prestação pecuniária para pagamento creche aderente rede privada
- condição de residência das crianças em PT (independentemente da nacionalidade)
- cidadãos espanhóis/portugueses - actividade PT - **residência ES**
- assistência social – fora âmbito Reg 883/2004 – artigo 3.º/5 a) Reg 883/2004



# Coordenação/Cooperação Portugal-Espanha

## Medidas de apoio às famílias – creches gratuitas (Cont.)

- artigo 45.º/2 TFUE (princípio não discriminação)
- artigo 7.º/2 Reg 492/2011 – vantagem social – caso *Martinez Sala* (Proc. C-85/96, de 12/5/1998)
- trabalhadores fronteiriços? Caso *Depesme e.o.* (Proc. C-401/14 a C-403/15, 15/12/2016)
- Trabalhadores fronteiriços espanhóis – discriminação indirecta?
- trabalhadores fronteiriços que exercem actividade no EM da sua nacionalidade (PT) e residem noutro EM – Caso *Hartmann* (Proc. C-212/05, 18/7/2007)

Thank you for your attention!

# Q&A

*BREAK*  
SEE YOU AT 14.00 FOR THE AFTERNOON SESSION

# LABOUR INSPECTORATE & POSTING PANEL

## CHAired BY

# PROF. DRA. ALEXANDRA ARAGAO

Faculty of Law of the University of Coimbra

# *The fight against fraud in transnational labour – the Spanish perspective*

PRESENTED BY:

## MANUEL PEDRO VELÁZQUEZ FERNÁNDEZ

Head of the Special Unit of coordination on fight against fraud in transnational labour



# La cooperación en movilidad laboral entre las inspecciones de España y Portugal

Manuel Velázquez

Jefe de la Unidad Especial de Coordinación en la Lucha contra el  
Fraude en el Trabajo Transnacional

EU MOBILITY

# La Inspección de Trabajo y Seguridad Social



Es una inspección de modelo generalista, con competencia en:

Relaciones laborales

Seguridad y salud en el trabajo

Seguridad Social

Trabajo de extranjeros nacionales de terceros estados




Compuesta por cerca de 2.000 funcionarios con labores inspectoras

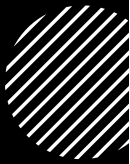



Estructurada por Comunidades Autónomas y Provincias





# Cooperación de 20 años entre la ACT y el OEITSS



Convenios Bilaterales  
entre la ACT y la ITSS



Acciones  
conjuntas

Construcción  
Agricultura  
Trabajos  
marítimos



Encuentros periódicos  
entre las direcciones de  
ambos organismos

# Acciones conjuntas en movilidad laboral



En el marco de la  
Autoridad Laboral  
Europea, el Acuerdo  
Bilateral entre la  
ACT y el OEITSS y la  
coordinación de  
sistemas de  
seguridad social



## Inspecciones conjuntas

Visitas de inspección  
con participación de  
inspectores de  
ambos países



## Inspecciones concertadas

Intercambio de  
información para  
investigar y tratar  
problemas concretos



## Cooperación reforzada

Entre las unidades y  
equipos de la ACT, el  
OEITSS y otros  
organismos

# Inspecciones conjuntas

---

1.

# En el sector de la construcción



Visitas y citaciones conjuntas de la ACT y la ITSS a empresas del sector



Control de condiciones de seguridad y salud en el trabajo en las obras

La legislación es similar pero hay diferencias en la presencia de recursos preventivos (vigilantes), control de la subcontratación y formación



Control de salarios y cotizaciones de seguridad social

El principal problema es el control de las compensaciones por viajes y manutención: ayudas de custo o dietas



Control de la presencia de trabajadores nacionales de terceros estados

Control de la situación de trabajadores con permiso para trabajar en un país aplicando la doctrina del TJUE en el asunto Vander Elst

## En empresas transfronterizas

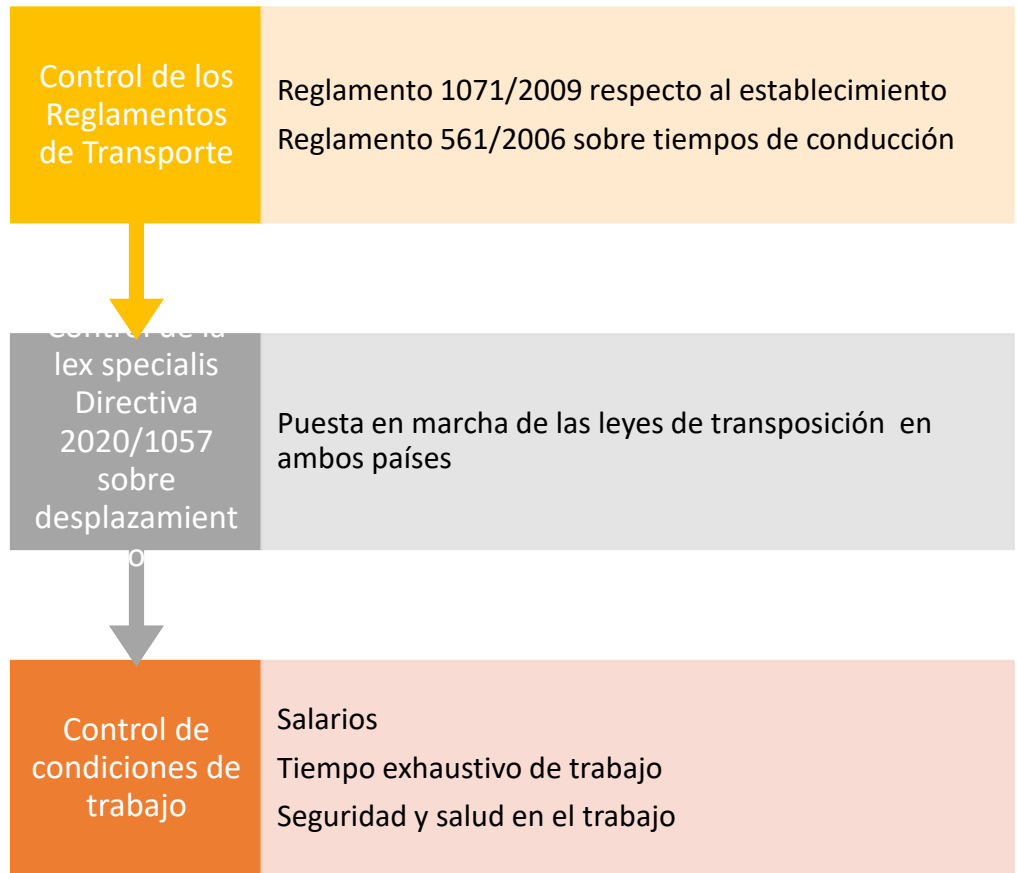
Visitas conjuntas a empresas con centros de trabajo a los dos lados de la frontera

Examen de la movilidad entre los centros de trabajo

Examen de las condiciones de trabajo

- Salarios
- Tiempo de Trabajo
- Seguridad y salud en el trabajo

# En empresas de transporte por carretera



# Inspecciones concertadas

---

2.

## En sector del transporte

Control del lugar de residencia de los conductores (Art. 13.1 Reglamento 883/2004 y Art. 11 Reglamento 987/2009)

Control del lugar de trabajo (Art. 13.1 Reglamento 883/2004 y Art. 14.8 y 10 del Reglamento 987/2009)

Control de la sede efectiva de la empresa (Art. 14.5 bis Reglamento 987/2009)

Posibilidad de un acuerdo entre instituciones competentes: Art. 16 Reglamento 883/2004



# Cooperación reforzada

---

3.

# Análisis y diagnóstico compartido sobre algunos temas

- Control de los accidentes de trabajadores desplazados
- Control de la percepción y cotización a la seguridad social de las compensaciones por manutención, viajes y estancias: las dietas y ayudas de custo
- Control de los desplazamientos de nacionales de países terceros: examinar los permisos vigentes en ambos países y las condiciones para el desplazamiento de acuerdo con la sentencia del TJUE en el Asunto Vander Elst
- Control de las empresas buzón o fachada: qué acciones son necesarias para comprobar los hechos

# Relación especial entre Equipos y Unidades de Movilidad Laboral

Equipo de movilidad  
laboral de la ACT

Unidad especial de  
lucha contra el fraude  
en el trabajo  
transnacional (EU  
Mobility) del OEITSS

Thank you for your attention!

# *The fight against fraud in transnational labour – the Portuguese perspective*

PRESENTED BY:

## RUI ARRIFANA

Labour Inspector at the Portuguese Labour Authority



**(Authority for Working Conditions)  
PORTUGUESE LABOUR INSPECTORATE**



REPÚBLICA  
PORTUGUESA

TRABALHO, SOLIDARIEDADE  
E SEGURANÇA SOCIAL



**Part of the direct administration of state under the  
Ministry of Labour, Solidarity and Social Security**



## MAIN ATTRIBUTIONS (ILO CONVENTIONS)

- To promote the improvement of working conditions, through compliance control and monitoring
- The enforcement of labour standards and OSH legislation
- Promotion of policies of prevention of occupational risks.





# MISSION



Improvement of  
working  
conditions

Compliance

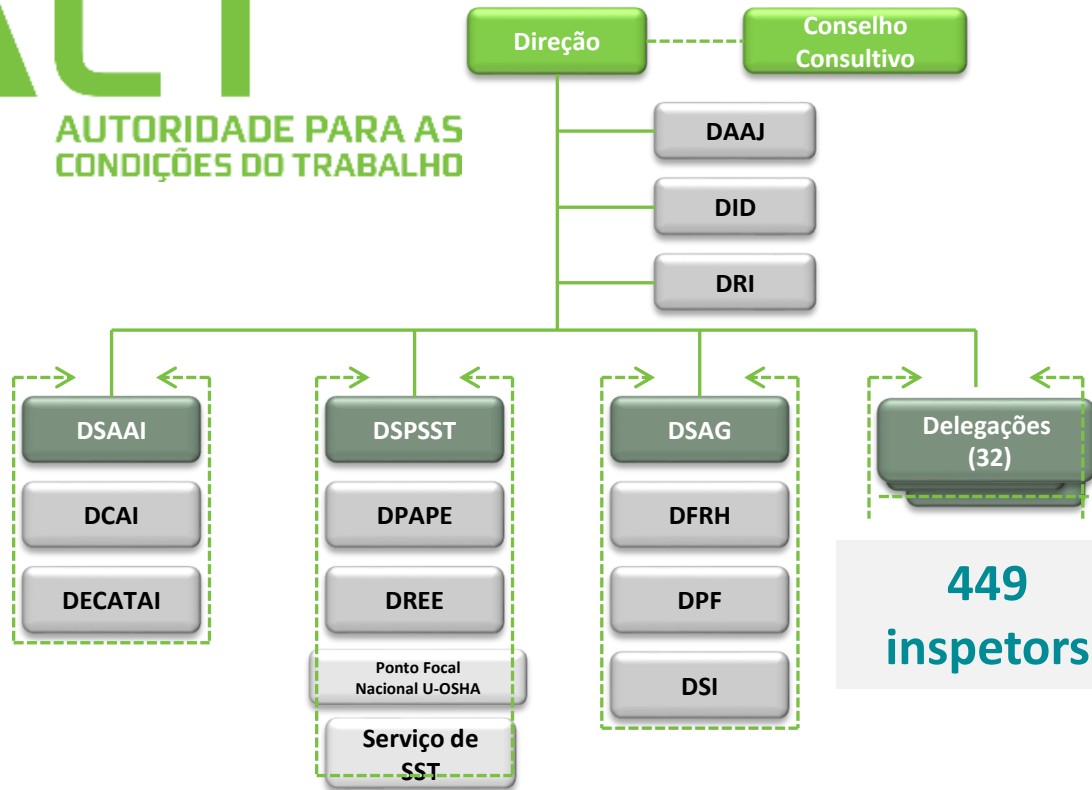
Labour  
relations

OSH





**Generalist: labour relations and occupational safety and health (OSH) in all private sectors**  
**Public sector – Only OSH**



## State central authority - jurisdiction over the whole mainland territory – 32 local units

Almada | Aveiro | Barreiro | Beja | Braga | Bragança | Caldas da Rainha | Castelo Branco | Coimbra | Covilhã | Évora | Faro | Figueira da Foz | Guarda | Guimarães | Lamego | Leiria | Lisboa | Penafiel | Portalegre | Portimão | Porto | Santarém | São João da Madeira | Setúbal | Sintra | Tomar | Torres Vedras | Viana do Castelo | Vila Franca de Xira | Vila Nova de Famalicão | Vila Real | Viseu

# MoveS seminar Portugal-Spain

- Passado:
  - Primeiras experiências (2003/2007)
    - Ponte Internacional de Quintanilha
    - *Vademecum*
    - Protocolo PT/ES
    - Trabalho transfronteiriço
- [https://www.rtp.pt/noticias/pais/construcao-da-ponte-internacional-de-quintanilha-sem-acidentes-mortais-considerada-exemplar\\_n48753](https://www.rtp.pt/noticias/pais/construcao-da-ponte-internacional-de-quintanilha-sem-acidentes-mortais-considerada-exemplar_n48753)



# MoveS seminar Portugal-Spain

- Presente:
  - Reforço da cooperação (2023/2024)
    - Protocolo PT/ES
    - Trabalho transfronteiriço
    - Eurodetachement
    - GT's Mobilidade
    - ELA
  - Coordenação
  - Não repetição



# MoveS seminar Portugal-Spain

- Futuro:
  - Aprofundar a cooperação (2025...)
    - Trabalhar com regularidade
    - Planos conjuntos
    - Visitas inspetivas quotidianas (e não só transfronteiriças)
    - Propor temas
    - Aprofundar temas
    - Coordenar atuação junto da CE e ELA em matérias sociais independentemente do poder político
    - (...)

CISION

ID: 107250068



21-09-2023

Meio: Imprensa  
País: Portugal  
Área: 39,9cm²

Âmbito: Informação Geral  
Period.: Diária  
Pág: 39



## Português morre em estaleiro

Um português de 41 anos morreu ontem num acidente de trabalho num estaleiro naval Armón Vigo, na Galiza. Terá ficado entalado por uma das gruas. Foi libertado mas não resistiu aos ferimentos. Devido à morte, vários sindicatos marcaram uma greve para hoje, com uma concentração. S.A.L.

# MoveS seminar Portugal-Spain

- A luta contra a fraude no trabalho transnacional – a perspectiva Portuguesa:
  - O foco fraude vs prevenção
  - O foco crime vs social
  - A visão laboral
  - O transnacional é mesmo transnacional
  - Origem vs destino
  - ELA vs inspeção europeia
- [https://www.youtube.com/watch?v=-e1\\_QhJ1EhQ](https://www.youtube.com/watch?v=-e1_QhJ1EhQ)

Thank you for your attention!



# *Data on posting of workers between Portugal and Spain*

PRESENTED BY:

**PROF. DRA. DOLORES CARRASCOSA BERMEJO**

Universidad Pontificia Comillas, Madrid

**PROF. DR. OSCAR CONTRERAS HERNANDEZ**

Castilla La-Mancha University, Posting-Stat Project

**DESPLAZAMIENTO DE TRABAJADORES**  
**ENTRE PORTUGAL Y ESPAÑA**

**Seminario MoveS**  
**Portugal-España**  
**Coimbra**  
**09.10.2023**

**1º) INTRODUCCIÓN: marco normativo del desplazamiento y fuentes de datos**

**2º) DATOS SOBRE DESPLAZAMIENTOS (PORTUGAL Y ESPAÑA)**

- VOLUMEN, CARACTERÍSTICAS
- SECTORES, DURACIÓN

**3º) DESPLAZAMIENTOS IRREGULARES**

**4º) REFLEXIONES FINALES**

# MARCO NORMATIVO: SEGURIDAD SOCIAL Y LABORAL

**COORDINACIÓN DE SEGURIDAD SOCIAL**  
**¿Dumping?**



- Reglamento 883/2004
- Reglamento 987/2009
- Reglamento 1231/2010



**CUESTIONES LABORALES**  
**Antidumping**



- Directiva 96/71
- Directiva 2014/67
- Directiva 2018/957
- (\*)Directiva 2020/1057

**NORMATIVA NACIONAL A CONSIDERAR**  
 (Leyes laborales, de inspección, de seguridad social, convenios colectivos...)



- Lei 99/2000 Codigo do Trabalho
- Lei 29/2017 (Transposição)...



- RDL 2/2015 Estatuto Trabajad.
- Ley 45/1999 (Transposición)...

# ¿DATOS DISPONIBLES SOBRE EL DESPLAZAMIENTO DE TRABAJADORES?



## 1) INFORMES PROYECTO POSTING.STAT

- Informe europeo
- Informes nacionales (10 Estados). [LINK A INFORMES](#)
- Informe España (en español) <https://zenodo.org/record/6574005#.Yo-bBS8INpQ>

## 2) INFORMES europeos:

- [Posting of workers \(Report on A1 PD \(2021\): De Wispelaere et al\).](#) Anual
- Posting of workers (*Data from the prior declaration tools (2020): De Wispelaere et al*)

Desplazamiento nacionales de terceros Estados ELA

<https://www.ela.europa.eu/sites/default/files/2023-04/ela-report-posting-third-country-nationals.pdf>

## 3) Otros:

Carrascosa Bermejo, D., Molina Millán, J. “The binding nature of posting PDA1 issued under EU social security Coordination Regulations and the possible role of national courts”. ERA Forum 24, 69–103 (2023). <https://doi.org/10.1007/s12027-023-00749-6>

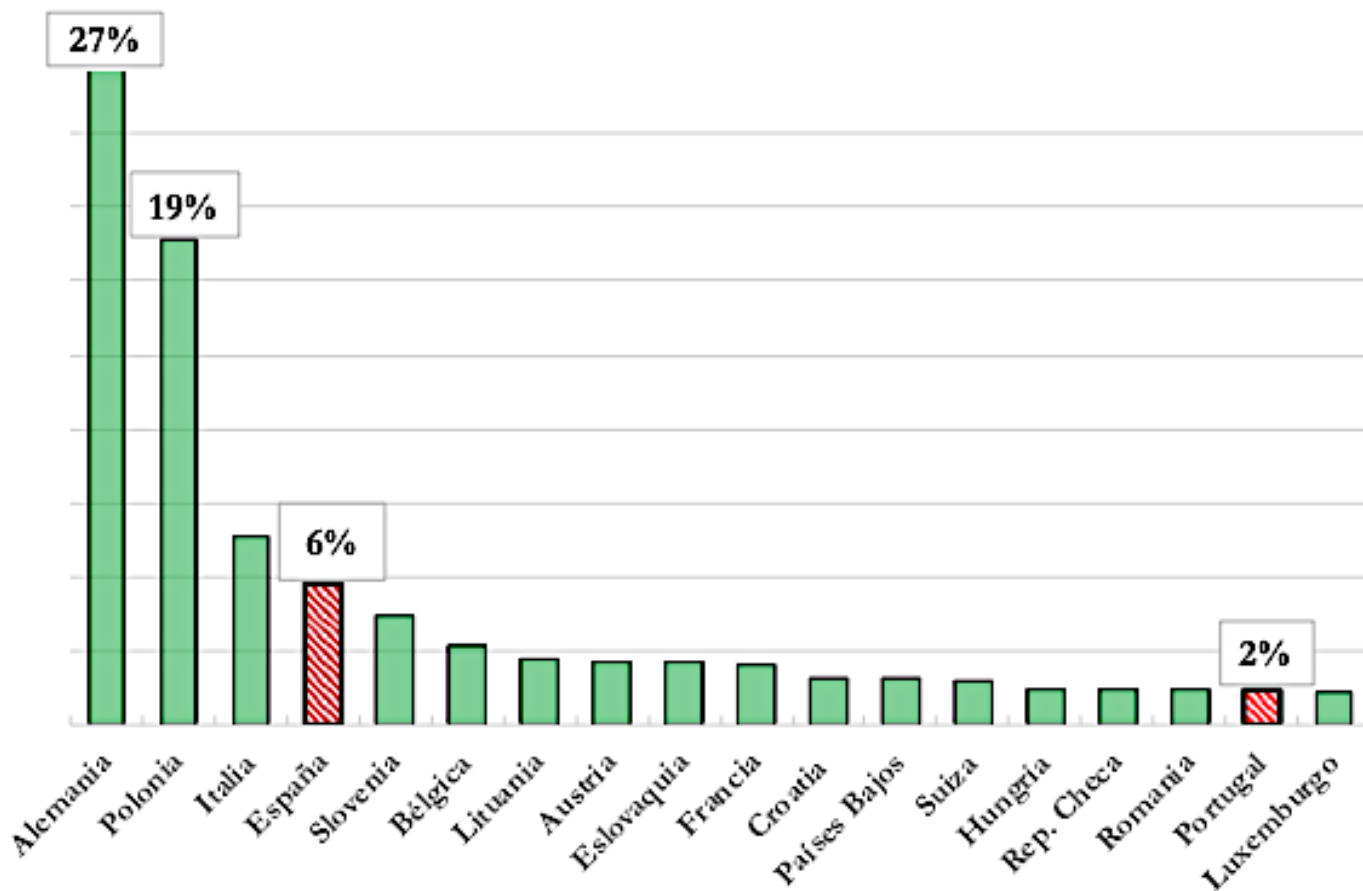
# Desplazamientos Trabajadores UE/AELC



\* PDs A1 (artículos 12 y 13) expedidos por país de origen

*Fuente: De Wispelaere et al (2021)*

<b>País Origen</b>	<b>DPs A1</b>	<b>% total</b>
Alemania	997.031	27%
Polonia	676.839	19%
Italia	274.789	8%
<b>España</b>	<b>211.529</b>	<b>6%</b>
Slovenia	168.126	5%
Bélgica	128.293	4%
Lituania	110.641	3%
Austria	106.766	3%
Eslovaquia	106.212	3%
Francia	102.088	3%
Croacia	83.740	2%
Países Bajos	81.889	2%
Suiza	78.163	2%
Hungría	68.849	2%
Rep. Checa	68.277	2%
Romania	67.891	2%
<b>Portugal</b>	<b>67.173</b>	<b>2%</b>
Luxemburgo	65.737	2%
Otros países	182.476	5%



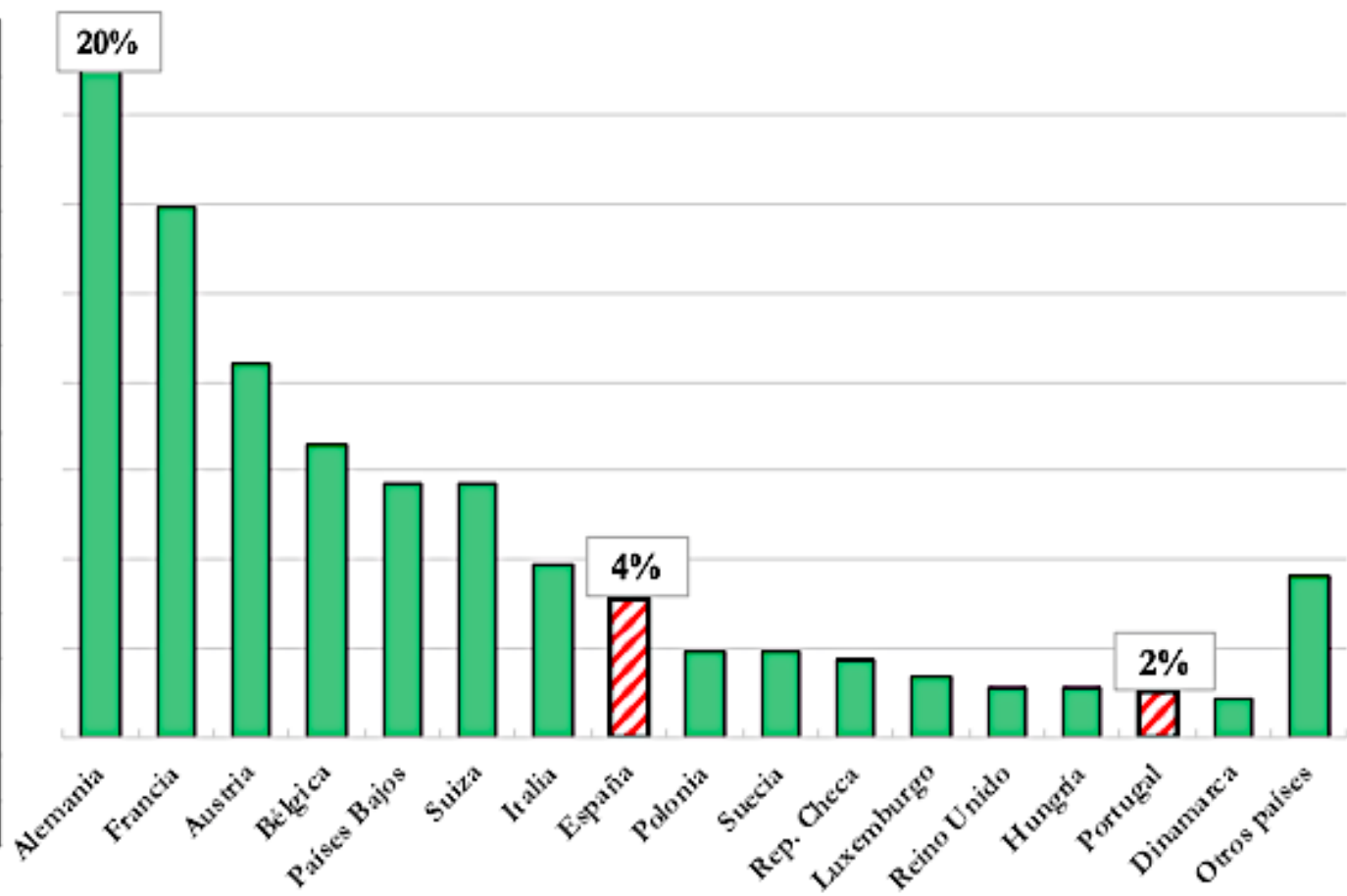
# Desplazamientos Trabajadores UE/AELC



\* PDs A1 (Art. 12 Rto. 883/2004) expedidos por país de recepción

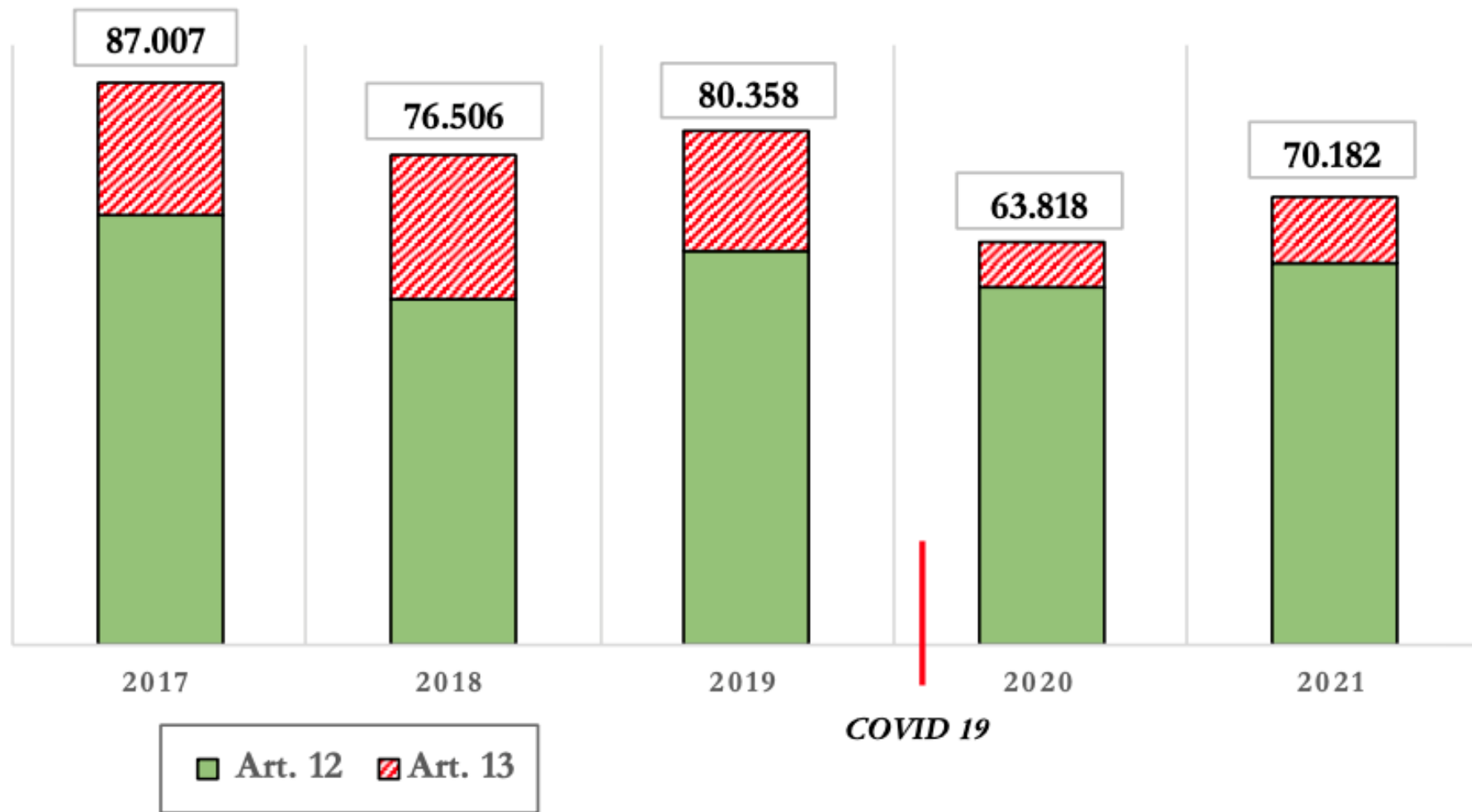
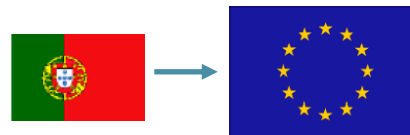
*Fuente: De Wispelaere et al (2021)*

País Acogida	DPs A1	% total
Alemania	429.749	20%
Francia	308.008	14%
Austria	220.629	10%
Bélgica	174.157	8%
Países Bajos	153.203	7%
Suiza	152.787	7%
Italia	107.791	5%
<b>España</b>	<b>88.320</b>	<b>4%</b>
Polonia	58.024	3%
Suecia	57.939	3%
Rep. Checa	54.284	3%
Luxemburgo	43.884	2%
Reino Unido	38.340	2%
Hungría	38.329	2%
<b>Portugal</b>	<b>36.220</b>	<b>2%</b>
Dinamarca	31.096	1%
Otros países	101.515	5%

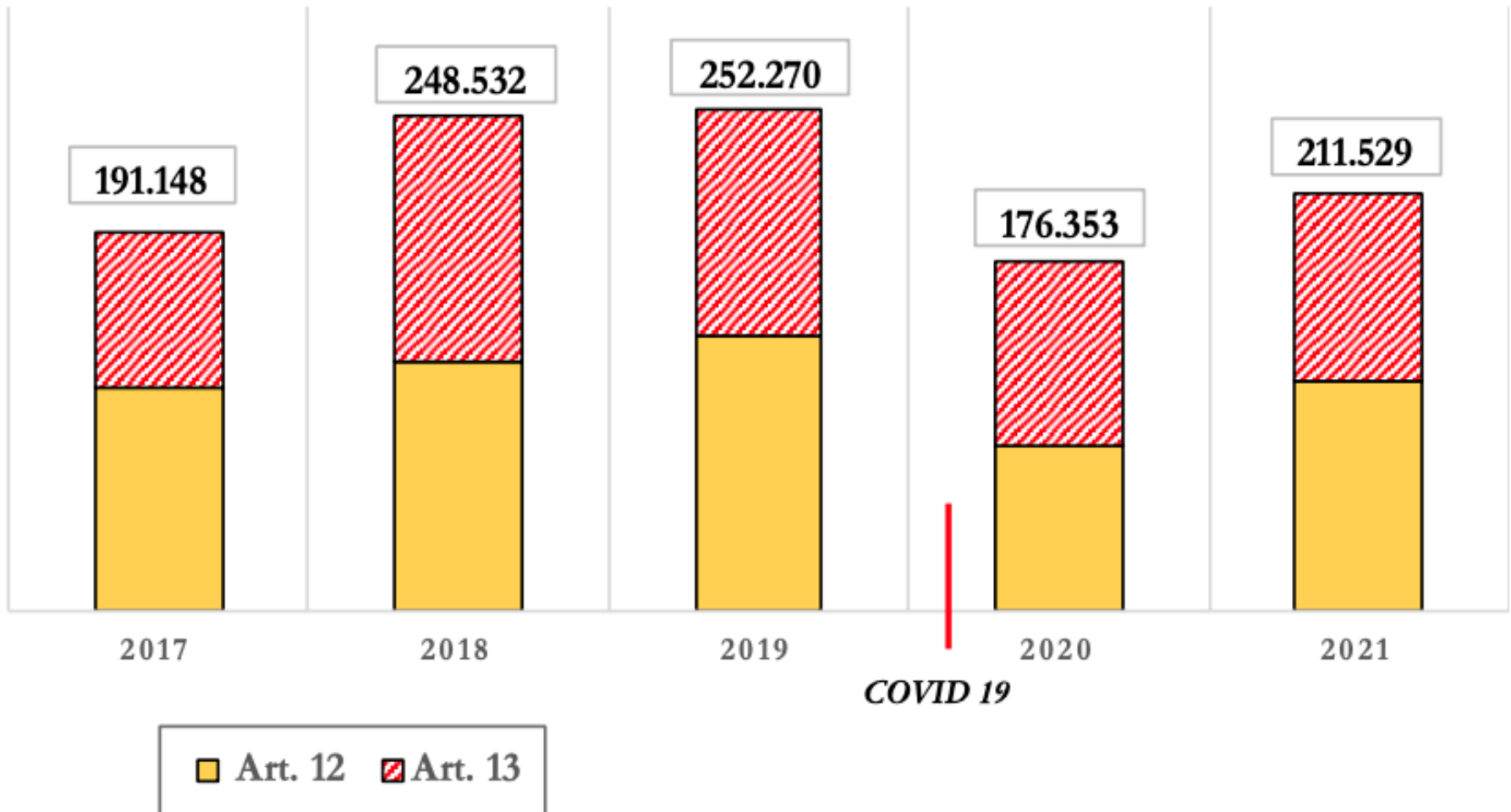
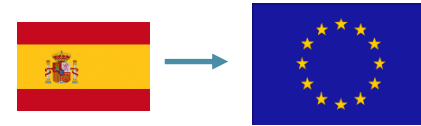


# Desplazamientos Trabajadores Portugal a otros países UE/AELC

\* (Evolución número de Certificados A1)



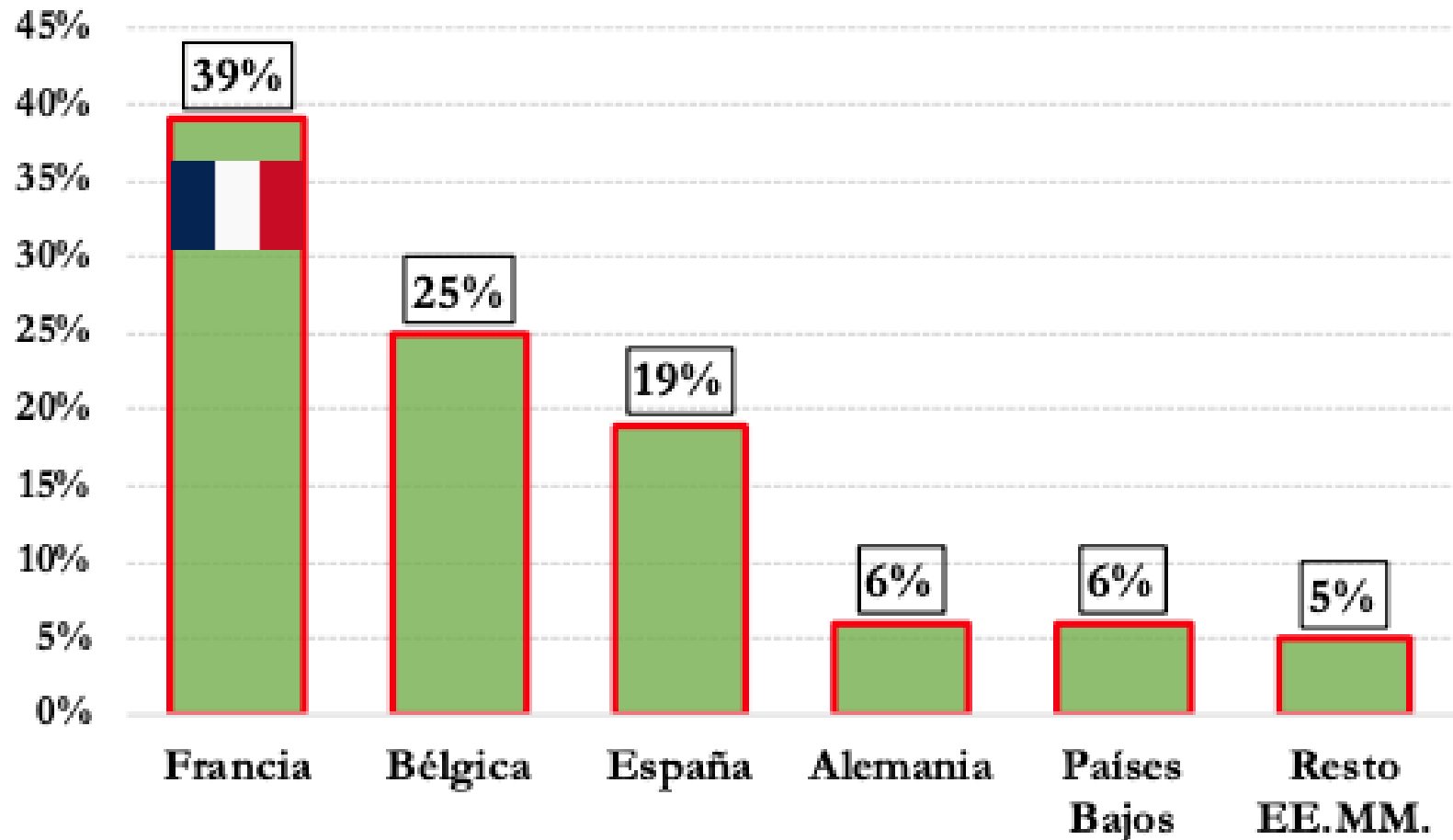
# Desplazamientos Trabajadores España a otros países UE/AELC \* (Evolución número de Certificados A1)





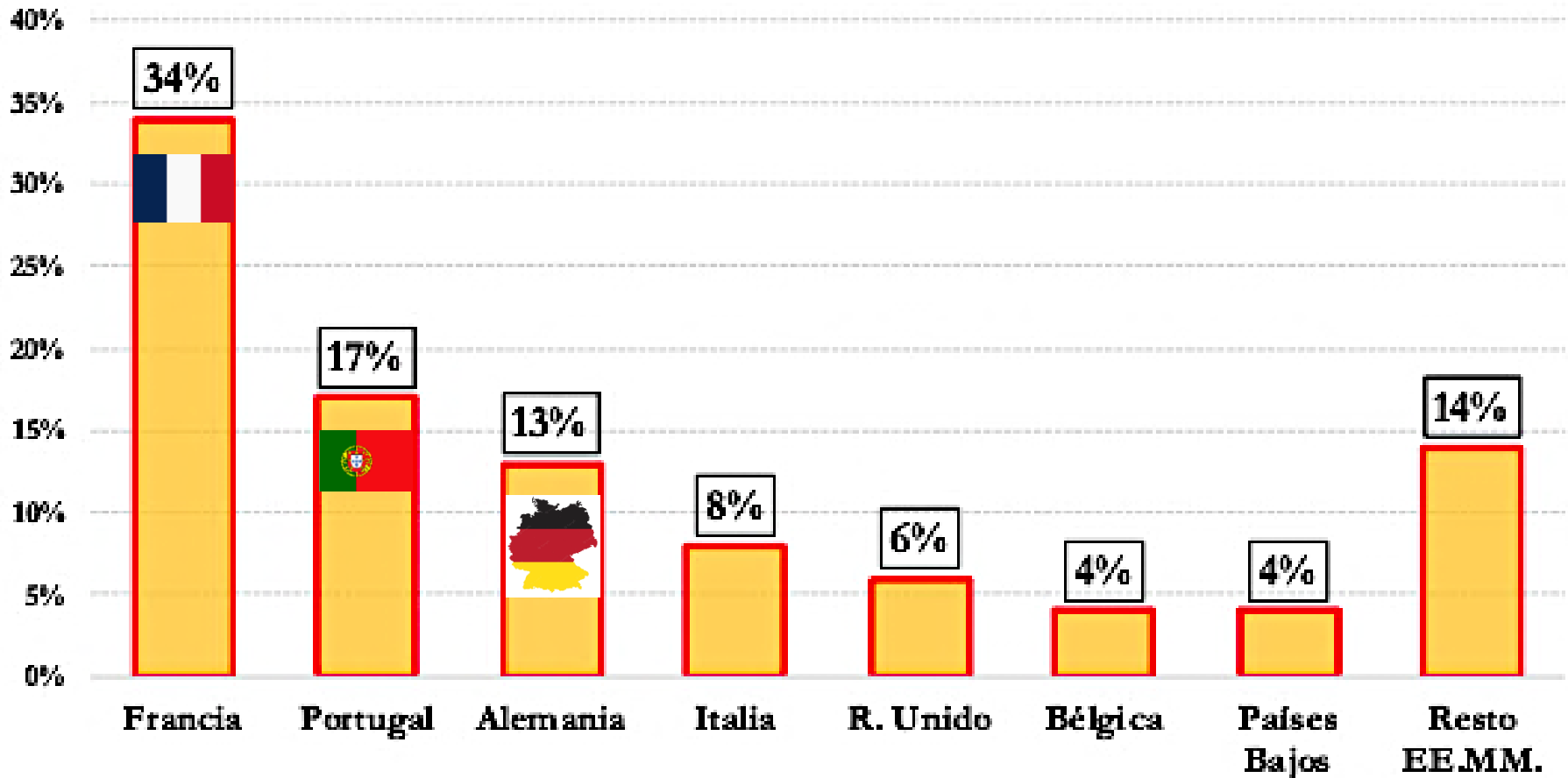
# Desplazamientos desde Portugal

\* Principales países de DESTINO, 2021

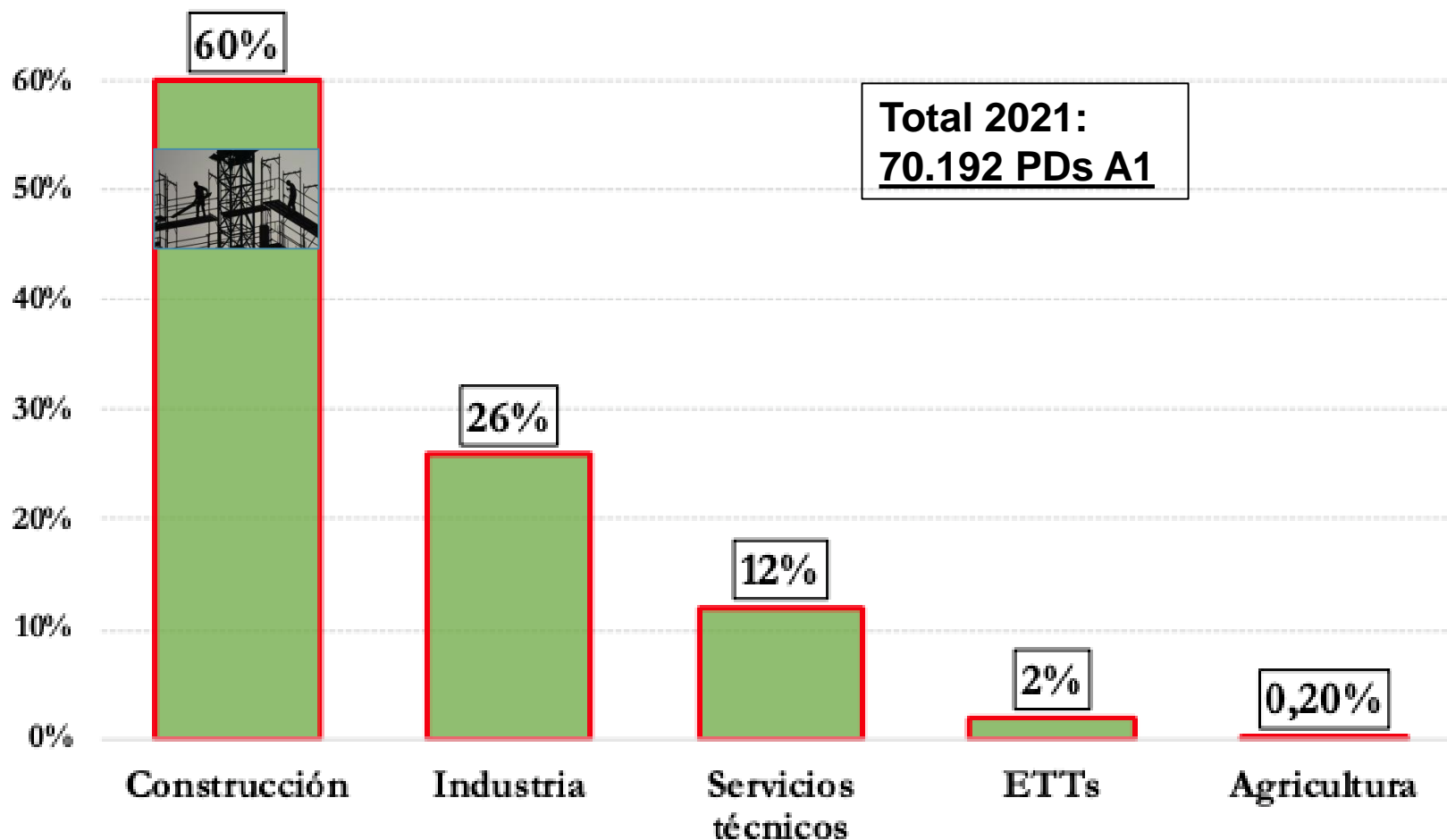


# Desplazamientos desde España

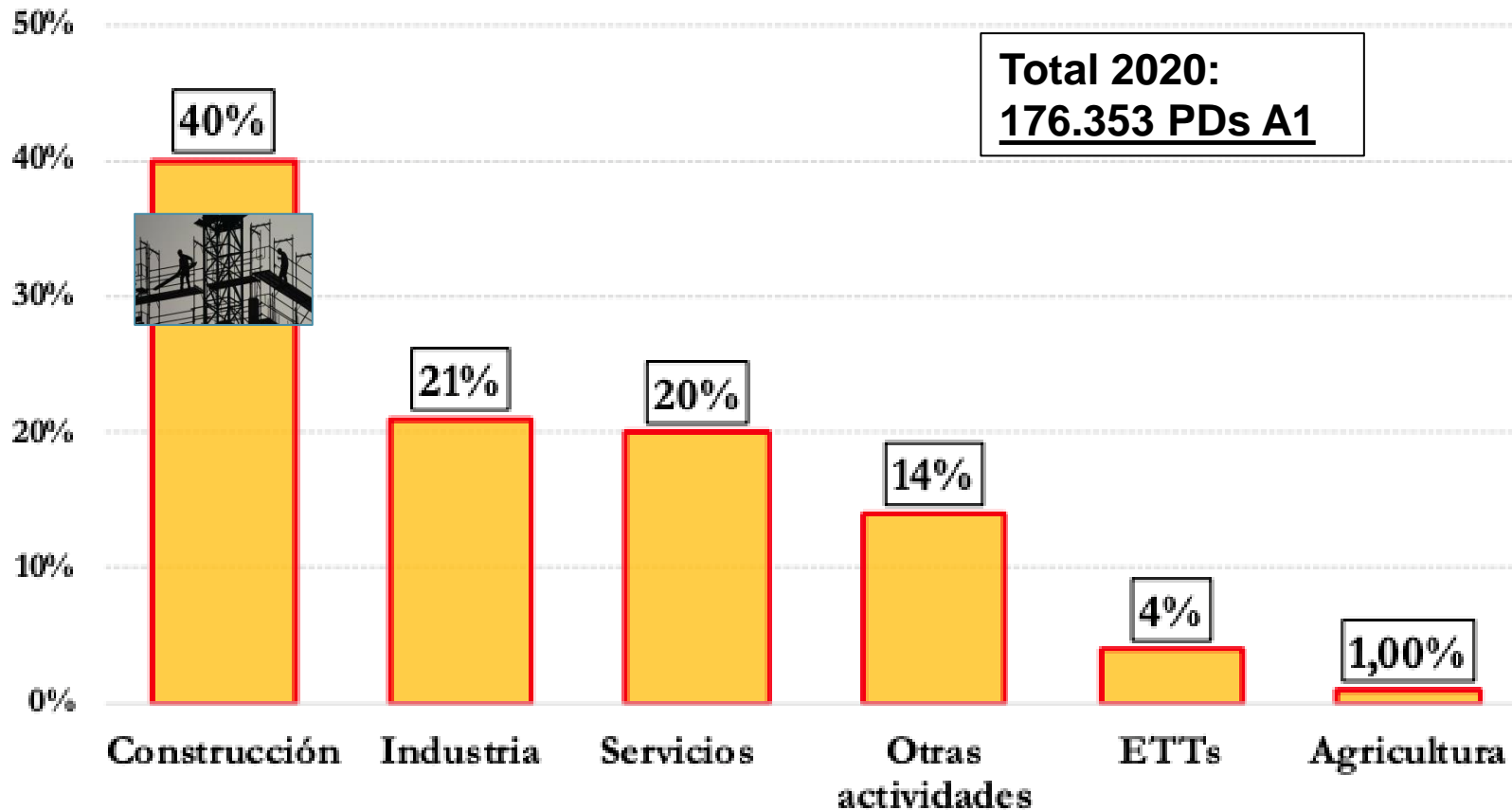
\* Principales países de DESTINO, 2021



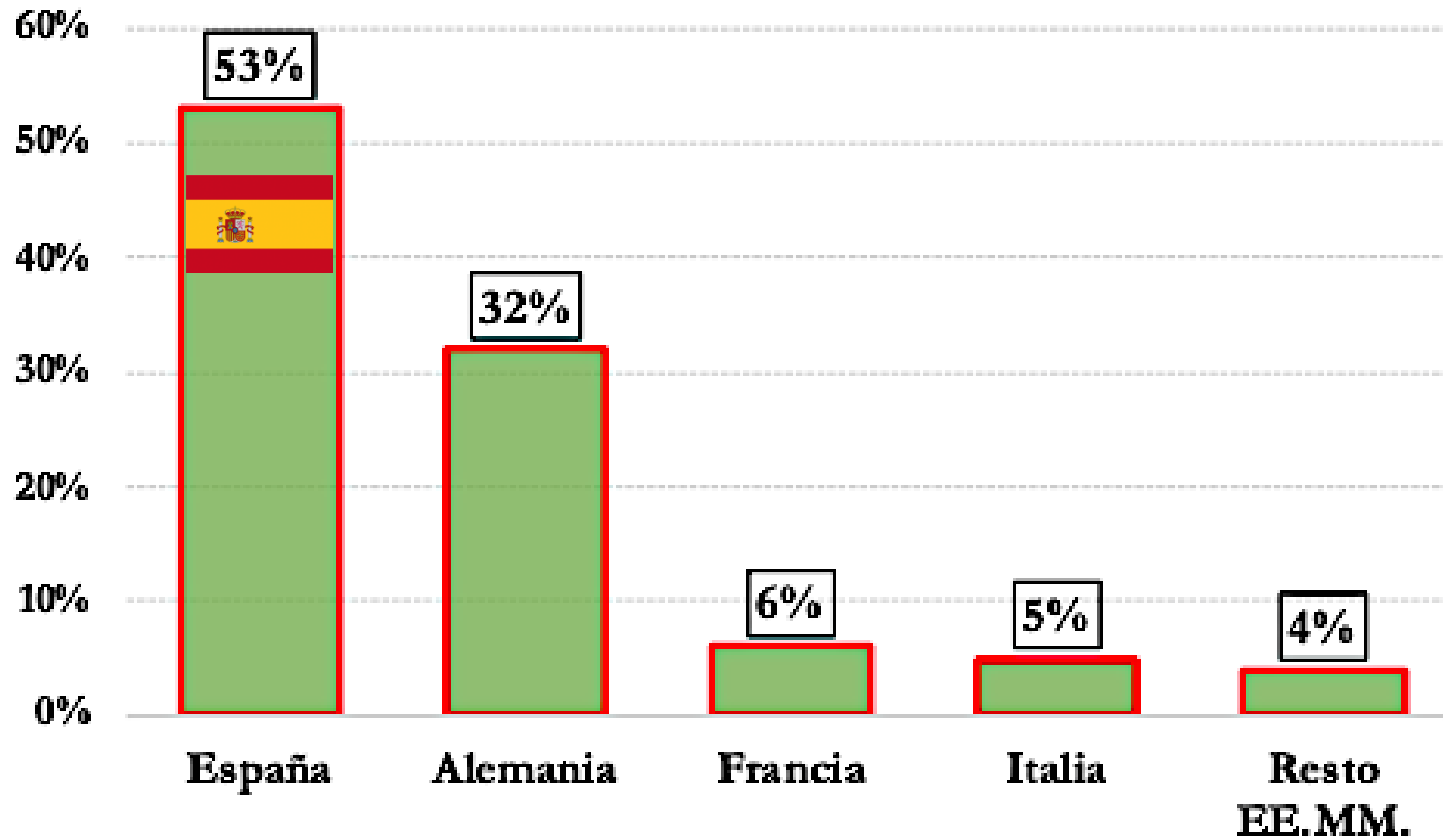
# Desplazamientos de Trabajadores \* (Por sectores de actividad)



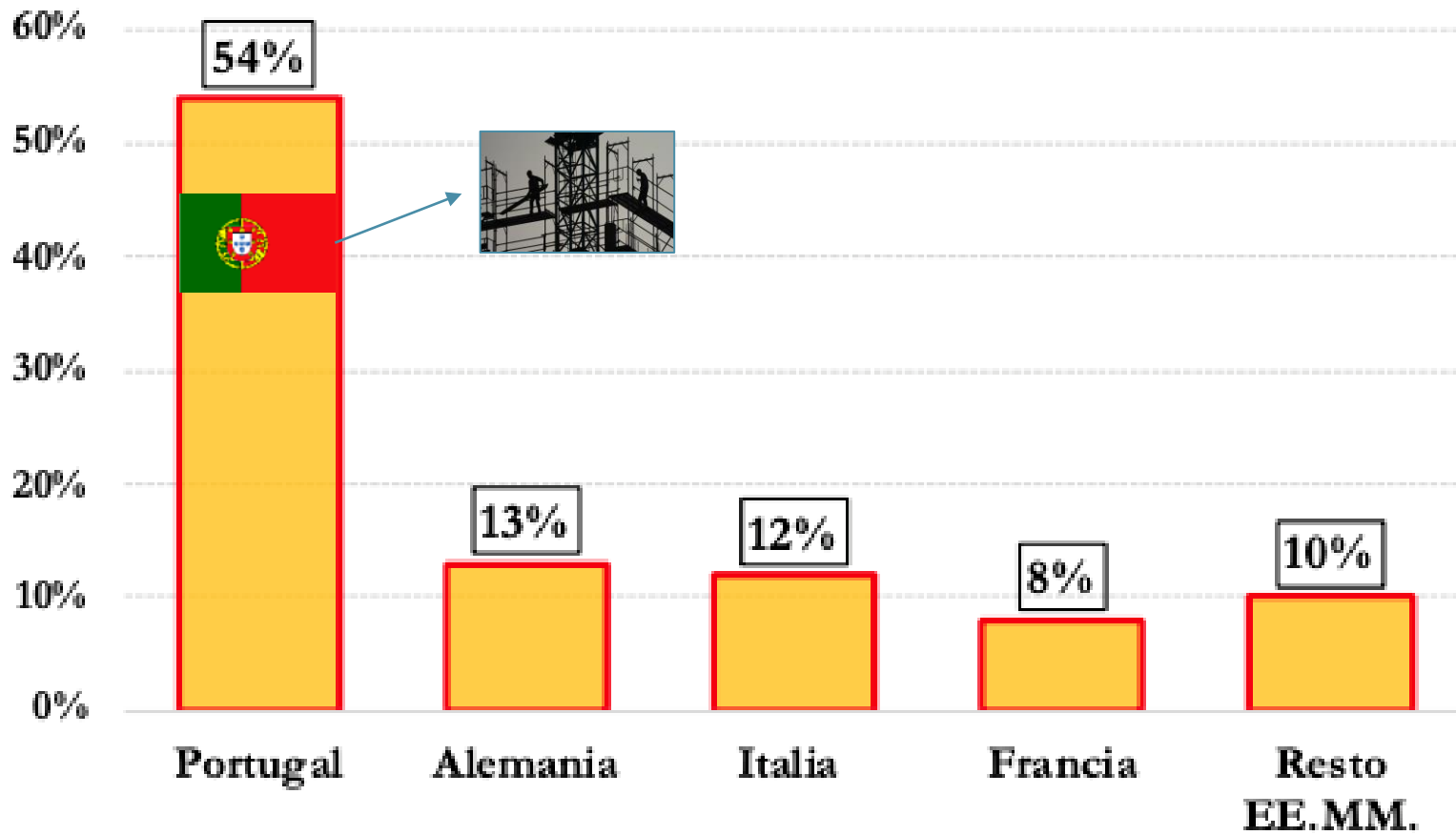
# Desplazamientos de Trabajadores \* (Por sectores de actividad)



# Desplazamientos de Trabajadores \* (Por país de ORIGEN)



# Desplazamientos de Trabajadores \* (Por país de ORIGEN)



- **Incumplimiento** (de fondo o formal // laboral o de seguridad social) con consideración de la intencionalidad (dolo, culpa, abuso de derecho...)
- En **España** sanción administrativa no penal. Entre 2018-2020:
  - 1.543 inspecciones de control de desplazamiento (0,3% de todas).
  - 315 sanciones 3.793 trabajadores y multas por 967.419 euros. El 30% de sanciones a empresas portuguesas (construcción),
- Relevancia: poco intercambio **vía IMI**, no hay **jurisprudencia**, ni **cuestiones prejudiciales** ante el TJUE. Poca **doctrina judicial** (2008/2021):
  - **ES** Estado **receptor** de desplazados de PT 8/9 (Inspección y sindicatos): falta de medidas de prevención, accidente de trabajo, reclamación salario convencional o mejora voluntaria, creación de empresas buzón portuguesas por empresa española (empleadora real).
  - **ES** Estado **emisor** de desplazados a PT 2/10: recargo de prestaciones // expedición retroactiva de A1.

- + Datos estadísticos sobre desplazamiento (laboral y de Seguridad Social) = decisiones informadas.
- + **Cooperación y confianza mutua:**
  - ad-intra (entre las Administraciones nacionales involucradas) y
  - ad extra (entre Administraciones de diferentes Estados + Autoridad Laboral Europea)
- + **Información** a empresas sobre sus obligaciones (convenios colectivos) y trabajadores sobre sus derechos y como reclamarlos.
- + Control de la **Inspección** de las condiciones laborales y de Seguridad social de los desplazados. Soluciones ad-hoc para nacionales de terceros Estados
- + Control por la **Comisión y la ELA** de prácticas nacionales que obstruyen indebidamente la libre prestación de servicios



# Thank you for your attention!

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# Q&A

# COFFEE BREAK

15.20-15.40

# FRONTIER WORKERS PANEL

## CHAIRER BY

# PROF. DRA. DOLORES CARRASCOSA BERMEJO

Universidad Pontificia Comillas, Madrid

# *Social security for frontier workers (unemployment, family benefits and health care): good practices and cooperation*

PRESENTED BY:

## PROF. DR. GREGA STRBAN

Ljubljana University of Law  
MoveS Visting Expert for Slovenia

# Background

- Comparison Portugal – Slovenia
- Challenging relations with the neighbours (MS)
- Social security
- Frontier workers
- Good practices and cooperation? (mutual trust and sincere cooperation)

# Unemployment

- Special rules for frontier workers
  - Unemployed persons residing in another MS (?)
  - Current social security Regulations
    - Partially or intermittently unemployed person
    - Wholly unemployed person
  - Proposals for improvement?
    - MS of the last 12 months work would become responsible for unemployment benefits
- Steering of unemployed persons (e.g. by AT)?
- Influence on the Slovenian legislation?

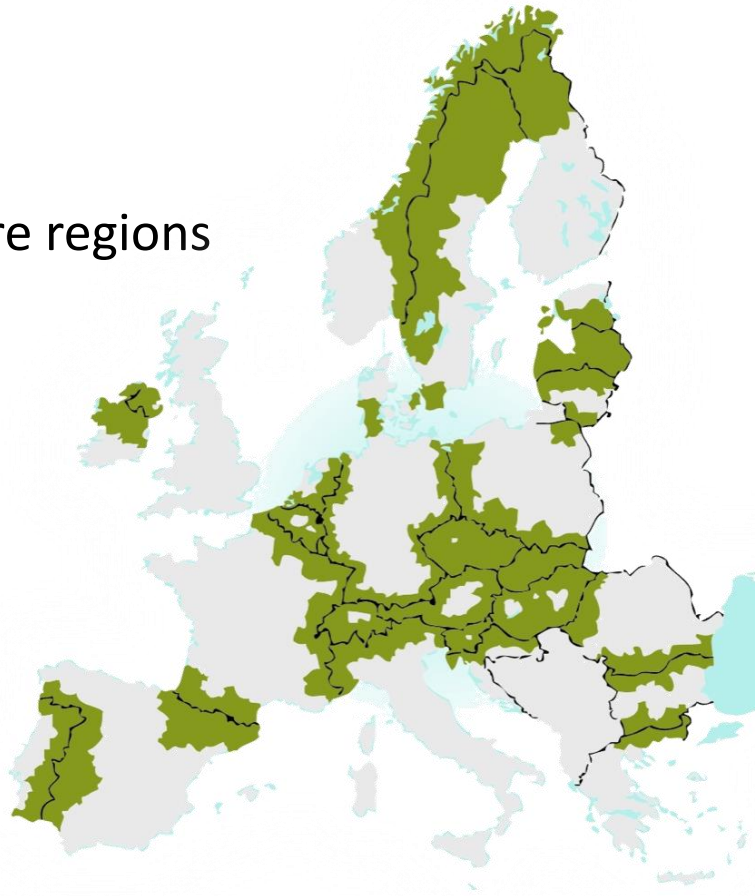
# Family benefits

- Special rules for family benefits
  - Applicable legislation (C-352/06 - *Bosmann*)
  - Export of benefits (C-347/12 - *Wiering*)
- Information exchange?
- Indexation of benefits (C-328/20 - *Commission v Austria*)?



# Healthcare

- Cross-border healthcare regions
  - EUREGHA



# Healthcare

- Frontier workers – work in one MS, reside in another
  - S1 form (e.g. receiving Slovenian health insurance card or ID)
  - Continuation of treatment for retired frontier workers (Art. 28 Reg. 883/2004)
  - Continuation of coverage (also ES-PT, Annex V Reg. 883/2004)
- Special rules for family members
  - Defining family member for cross-border healthcare, Art. 1(i)1(ii) Reg. 883/2004
  - Family members of frontier workers (Art. 18 Reg. 883/2004)
    - Equal healthcare in the competent Member State?
    - Only necessary treatment? (DK, IE, HR, FI, SE, UK, limited *ratione temporis* EE, ES, IT, LT, HU, NL)
- Frontier areas mentioned in Directive 2011/24/EU (Recital 39)

# Conclusions

- Many good practices and cooperation, but not always
- In cooperation among the MS we can achieve better social security for the peoples of Europe (among the values and goals of the Union – TEU)
- More efforts shall be invested in more harmonious (social) EU

Thank you for your attention!

# *Frontier workers between Portugal and Spain: labour and social security issues*

PRESENTED BY:

**TERESA VENTIN**

Director of EURES Northern Portugal - Galicia

## Seminário MoveS Portugal-España

# Trabalhadores fronteiriços entre Portugal e Espanha: questões laborais e de segurança social

- *Teresa Ventín, Directora do Gabinete EURES-T Norte de Portugal - Galicia*



The Devil  
is in the  
details



• **HELP ME!!!!**





# Regulamento 883/2004

- a) Prestações por doença
- b) Prestações por maternidade e por paternidade equiparadas
- c) Prestações por invalidez
- d) Prestações por velhice
- e) Prestações por sobrevivência
- f) Prestações por acidentes de trabalho e por doenças profissionais
- g) Subsídios por morte
- h) Prestações por desemprego
- i) Prestações por pré-reforma
- j) Prestações familiares



OBJETIVO

- **To create a transparent crossborder labor market**



**Deloitte.**



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Thank you for your attention!

# Q&A

# CLOSING REMARKS

Representative of the coordinating board of University of Coimbra Institute of Legal Research