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Measuring the size of intra-EU posting on the basis of data collected at European and national level

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HIVA – KU Leuven

Conference Intra-EU posting: costs and benefits

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Introduction

- Importance of free movement of persons, goods and services;
- A tradition of clear rules on social security coordination;
- Growing concern about social dumping;
- Latest reform efforts by the Labour Mobility Package and the European Pillar of Social Rights: towards fair labour markets;
- How substantial is it?

Proposal to revise the Posting of Workers Directive and Regulation on the coordination of social security systems

- **Posting of Workers Directive:**
  - All mandatory rules on remuneration in the host Member State apply to workers posted to that Member State (‘Equal pay for equal work in the same place’);
  - Rules on temporary work agencies;
  - Duration of posting longer than 24 months: the labour law of the host Member State will apply.

- **Regulation on the coordination of social security systems:**
  - Does not change the current rules: exception to the ‘lex loci laboris’ principle: subject to the social security system of the sending Member State if they are posted for less than 24 months;
  - Aligns the terminology for social security coordination with the Posting of Workers Directive;
  - A uniform approach to the issuance, verification and withdrawal of the Portable Document A1;
  - It strengthens the administrative rules on social security coordination in the fields of information exchange and verification of the social security status of such workers in order to prevent potentially unfair practices or abuse.

Legislation that applies to intra-EU mobility

Intra-EU labour mobility

	Labour migration	Cross-border work	Posting
	Migrating to a different country where one also works	Working in a different country than the country of residence	Temporarily working in a different country than the country in which the employer is based
Wage and labour conditions	Wage and labour conditions of the country of employment	Wage and labour conditions of the country of employment	Wage and labour conditions of the country of employment
Social security	Social security of the country of employment	Social security of the country of employment	Social security of the country of origin (if less than 24 months)
Place of residence	Country to which one migrates	Different country than the country of employment (neighbouring country)	< 3 months: often different country than that of temporary employment > 3 months: country of temporary employment

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Data collection of an unexplored but heavily politicised area

Article 91 of the Implementing Regulation on the coordination of social security systems: *"statistical data concerning the application of Regulations (EC) Nos 883/2004 and 987/2009 should be collected by the competent institutions in the Member States under the supervision of the Administrative Commission."*

Network Statistics FMSSFE

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EFTHEIA

The notion ‘posted worker’ under the EU rules on social security coordination and the Posting of Workers Directive

Regulation (EC) No 883/2004	***Directive 96/71/EC***
	Definition
Art. 12 (1) - Posted worker: *"a person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf […] provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person"*	**Art. 2 - Posted worker** means *"a worker who, for a limited period, carries out his or her work in the territory of a Member State other than the State in which he or she normally works (Article 2) provided that the undertakings, in the framework of transnational provision of services, take one of the following transnational measures:* ***(a)*** *post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or* ***(b)*** *post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or* ***(c)*** *being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting (Article 1(3)).”*
Art. 12 (2) - Posted self-employed person: *"a person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State […] provided that the anticipated duration of such activity does not exceed twenty-four months."*	**Posted self-employed persons are not covered by Directive 96/71/EC**

The notion ‘posted worker’ under the EU rules on social security coordination and the Posting of Workers Directive

- A distinction between posted workers (Art. 12 BR) and persons active in two or more Member States (Art. 13 BR) is not always easy to make in practice. As a result, workers active in two or more Member States may fall under the terms and conditions of the Posting of Workers Directive;

- Self-employed persons posted according to Article 12 (2) BR are not covered by the Posting of Workers Directive;

- Differences in scope (sub-contracting, intra-group, temporary agency work versus other situations).

Measuring the number of posted workers and the economic impact on sending and receiving Member States

Portable Document A1: is a formal statement on the applicable social security legislation. It proves, amongst others, that posted workers according to Article 12 of Regulation (EC) No 883/2004 or persons active in two or more Member States according to Article 13 of Regulation (EC) No 883/2004 pay social contributions in another Member State. This implies that they do not fall under the social security scheme of the Member State of (temporary) employment. -> **The form is not only issued to posted workers.**

- *PD A1 Questionnaire – reference year 2015:*
  - Type of activity (posting vs active in two or more MSs);
  - Status (employed or self-employed);
  - Sector of economic activity;
  - Individual persons;
  - Duration.

Number of intra-EU posted workers

- PD A1: only an indicative picture of the actual number of postings;
- The number of PDs A1 issued is not necessarily equal to the number of persons involved;
- Differences exist in the definition of posting between Regulation (EC) No 883/2004 and the Posting of Workers Directive;
- Some posted workers begin to work in another Member State without a PD A1;
- It is useful to compare the results of the collection of data on the number of PDs A1 to existing national registration tools.

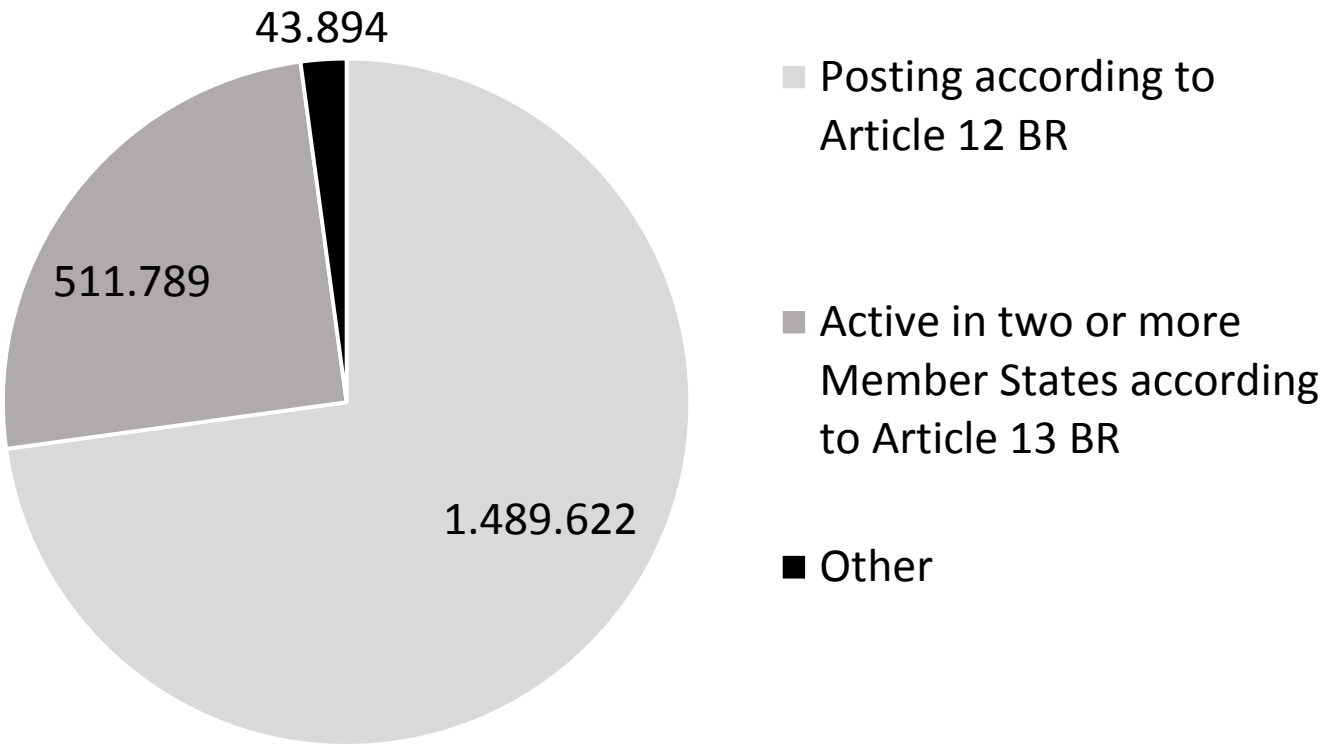
Intra-EU labour mobility: posting became a substantial third way

Type	Flow/Total	Number	As share of …	Year
Total EU/EFTA migrants of working age	Total	12.7 million	4% of total EU/EFTA population of working age	2015
Flow of EU/EFTA migrants of working age	Flow	1.2 million	0.4% of total EU/EFTA population of working age	2014
Of which 'return migration'	Flow	631,000	0.2% of total EU population of working age	2014
EU/EFTA migrants working and living in another MS	Total	8.6 million	3.9% of total EU/EFTA employment	2015
Cross-border workers in EU-28	Total	1.3 million	0.6% of total EU employment	2015
Number of persons insured in a MS other than the MS of (temporary) employment	Flow	2.05 million	± 0.6% of total EU/EFTA employment	2015

Source Fries-Tersch et al., 2016; Pacolet and De Wispelaere, 2016; EUROSTAT

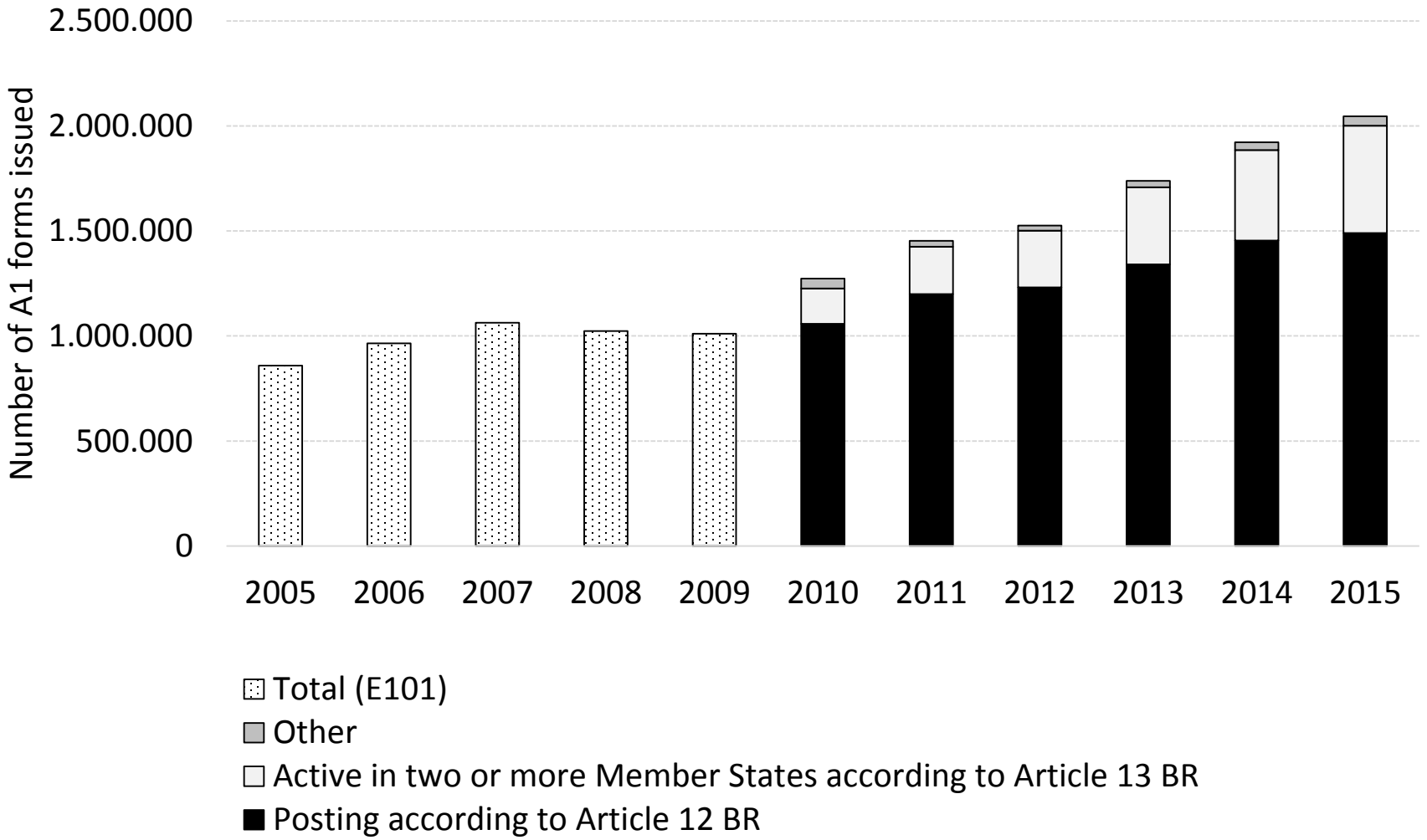
Number of PDs A1 issued, 2015

2.05 million PDs A1 issued to persons insured in a Member State other than the Member State of (temporary) employment



Source Pacolet and De Wispelaere, 2016

Evolution of the number of PDs A1 issued, 2010-2015



Source Pacolet and De Wispelaere, 2016; Ismeri, 2012.

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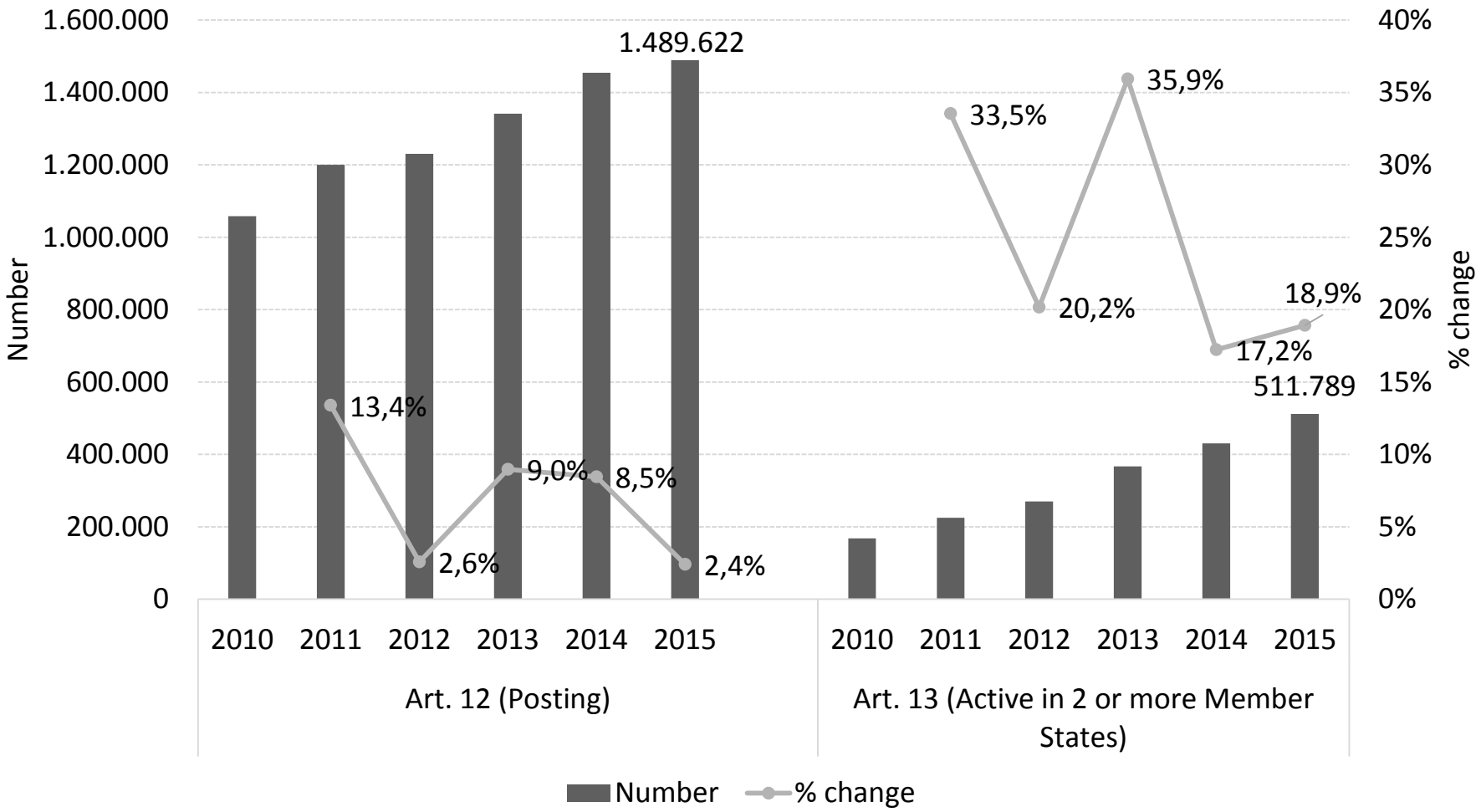

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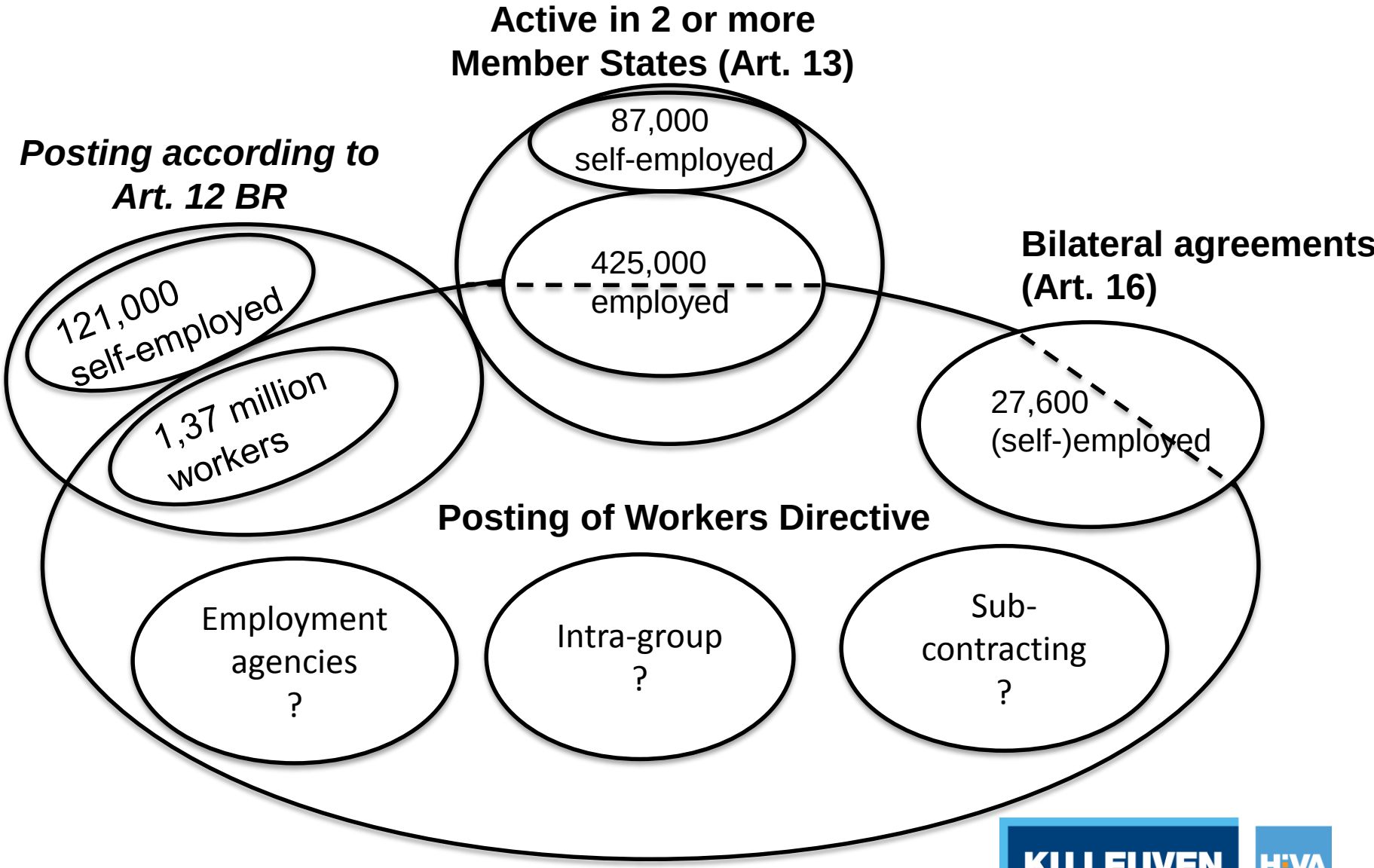
The notion ‘posted worker’ under Regulation (EC) No 883/2004 and Directive 96/71/EC



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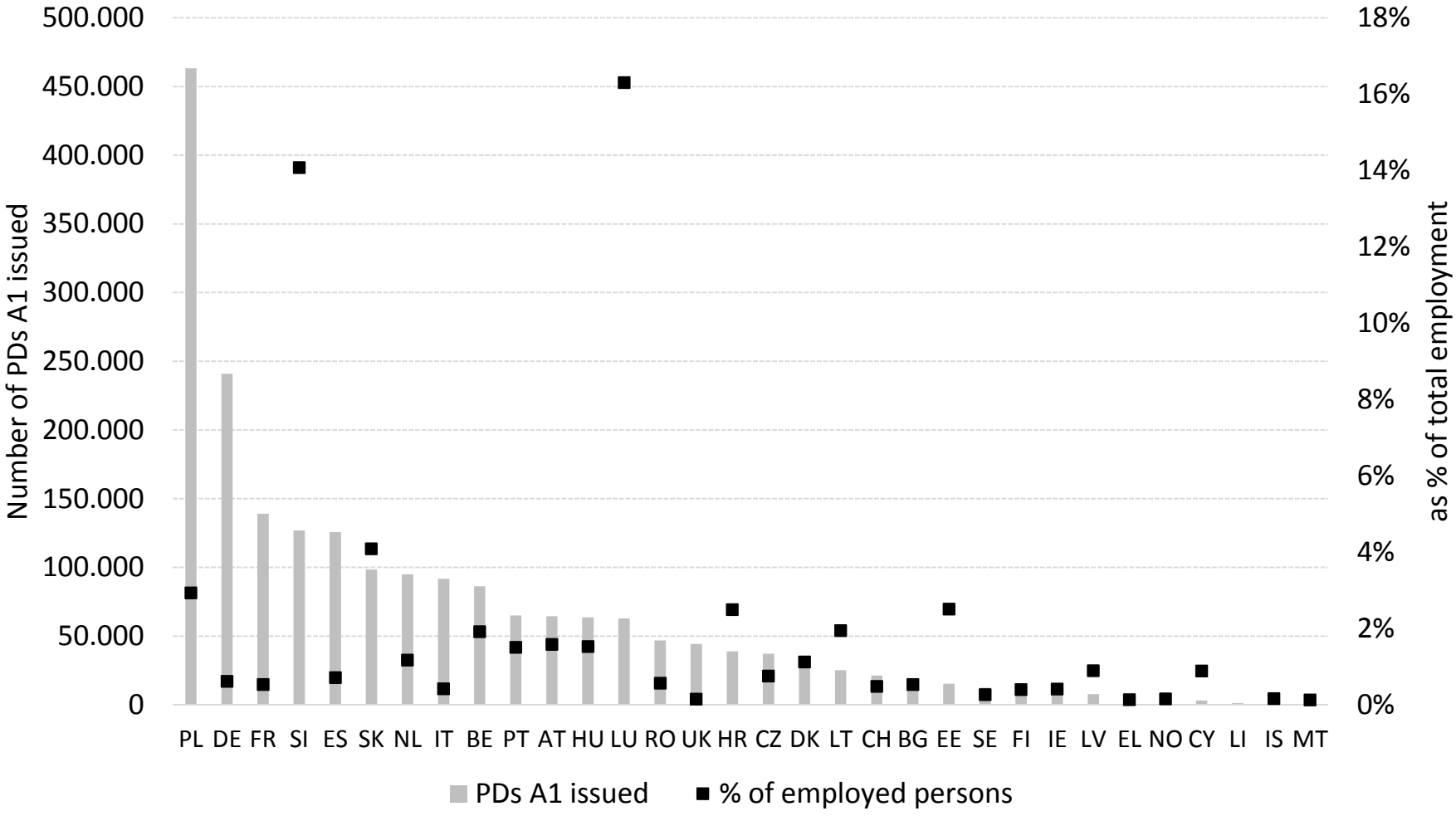
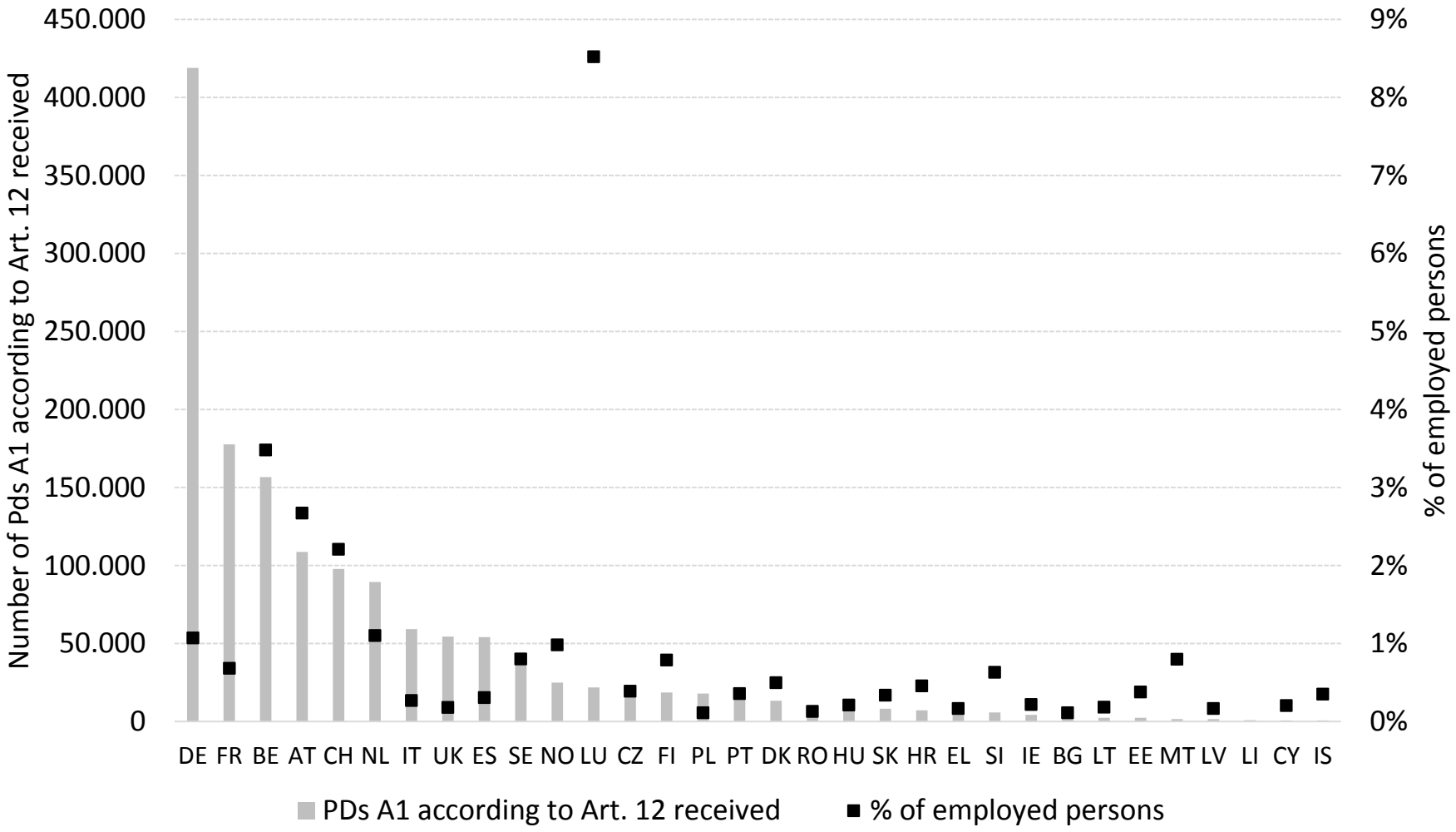
PDs A1 (posted workers + persons active in 2 or more Member States): Main sending Member States



Source Pacolet and De Wispelaere, 2016

Intra-EU posting: Main receiving Member States



Source Pacolet and De Wispelaere, 2016

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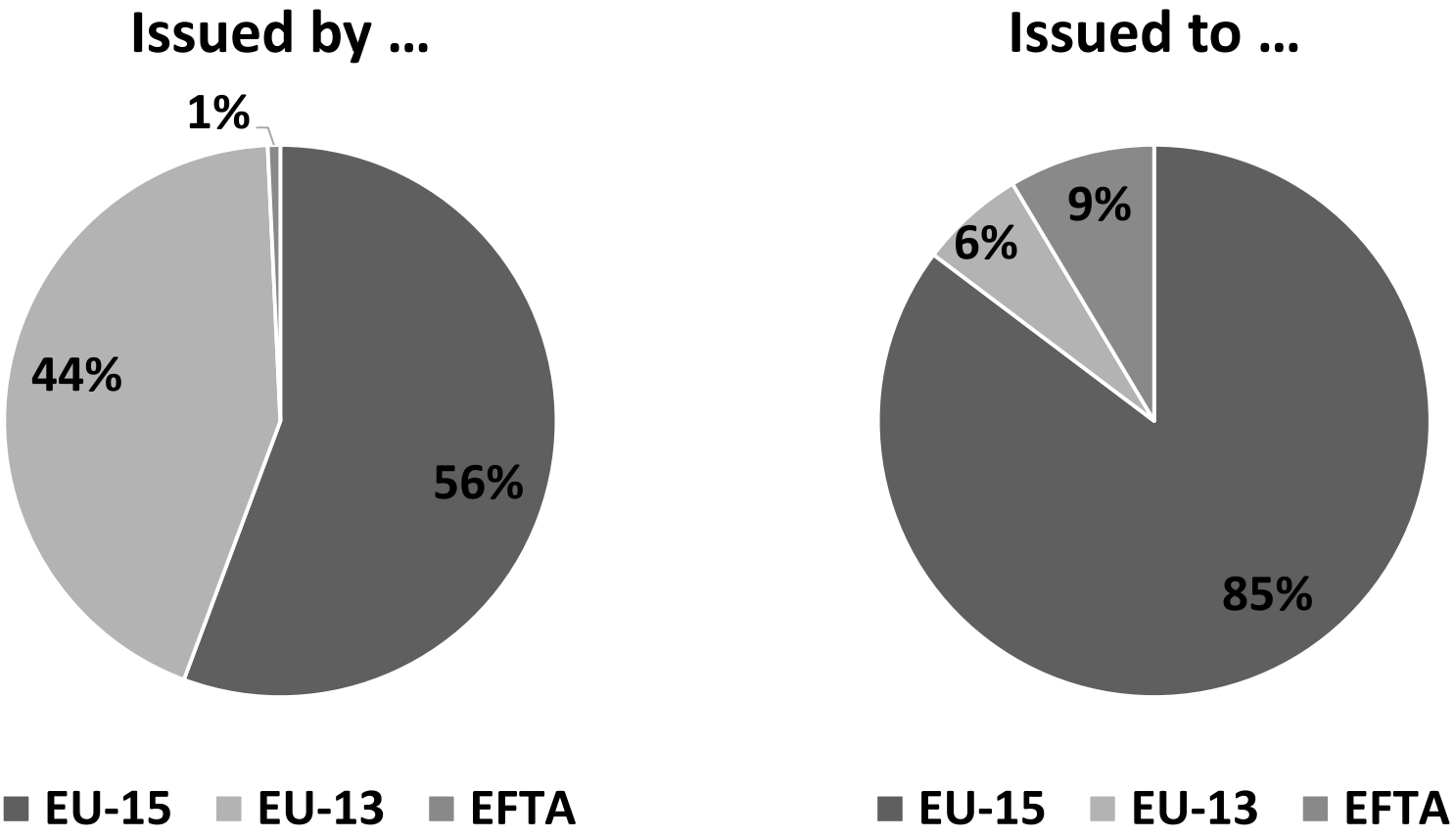
Intra-EU posting: Flows among Member States

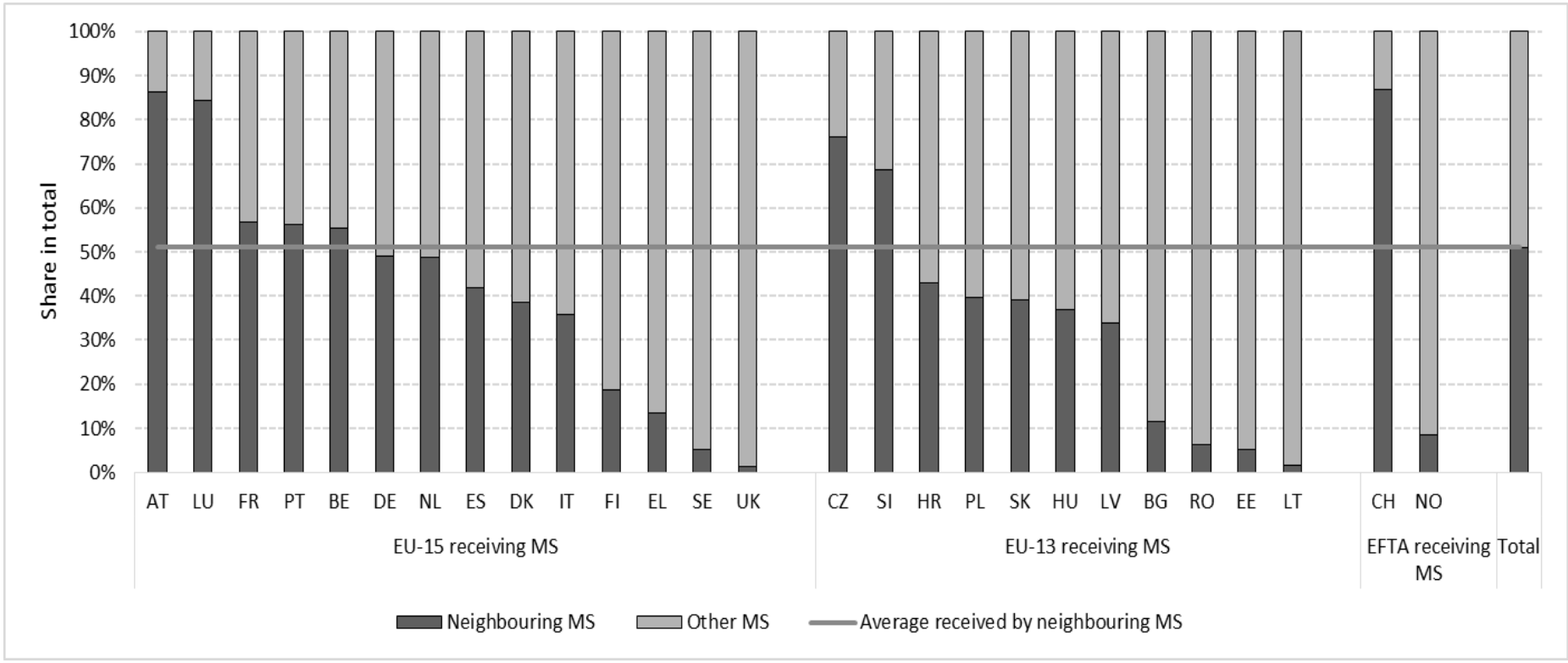
Not only from EU-13 to EU-15 but also across EU-15



Source Pacolet and De Wispelaere, 2016

Intra-EU posting: Flows among Member States

More than half of postings take place between neighbouring Member States



Source Pacolet and De Wispelaere, 2016

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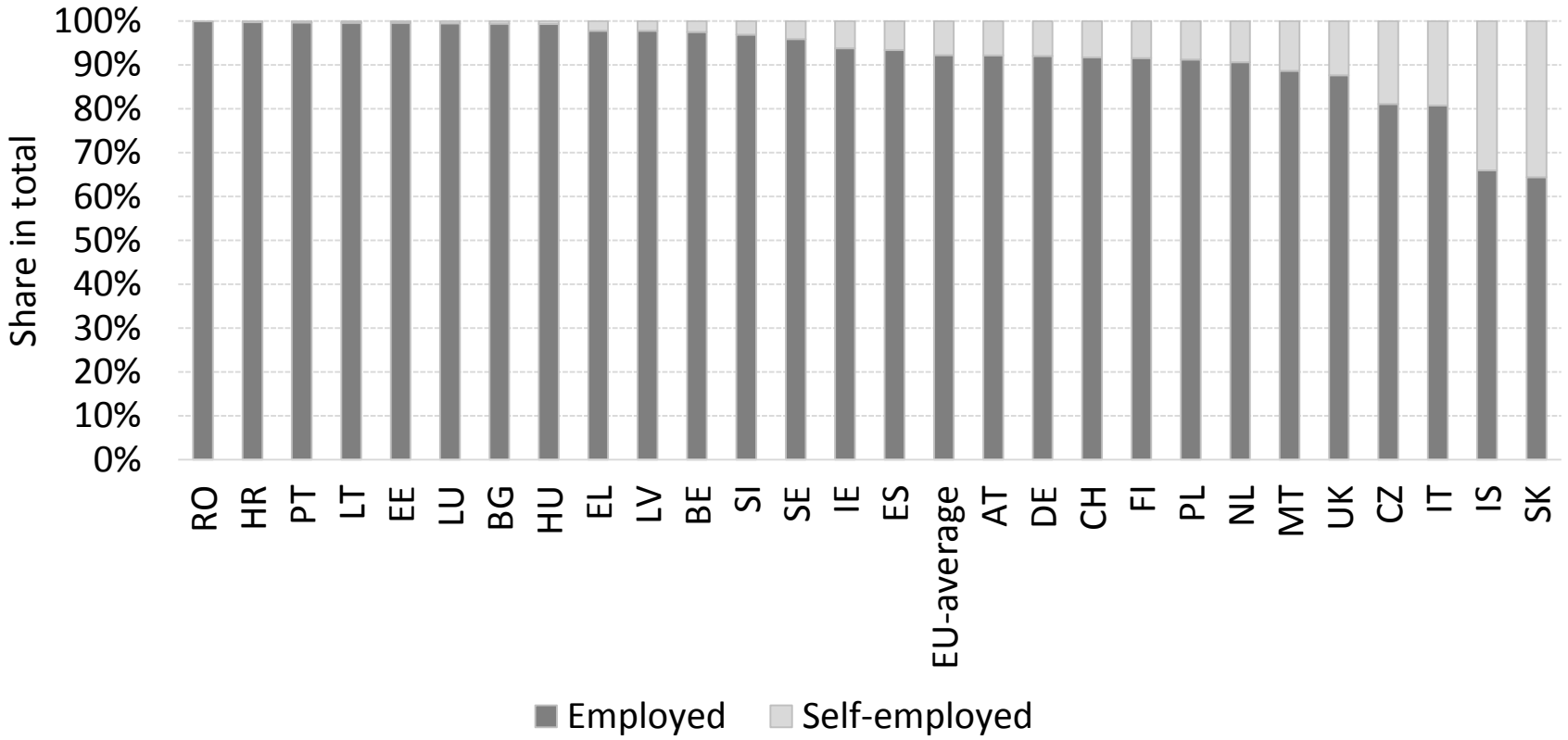
Intra-EU posting: Breakdown by status

On average 8% of the PDs A1 issued according to Article 12 apply to posted self-employed persons.



Source Pacolet and De Wispelaere, 2016

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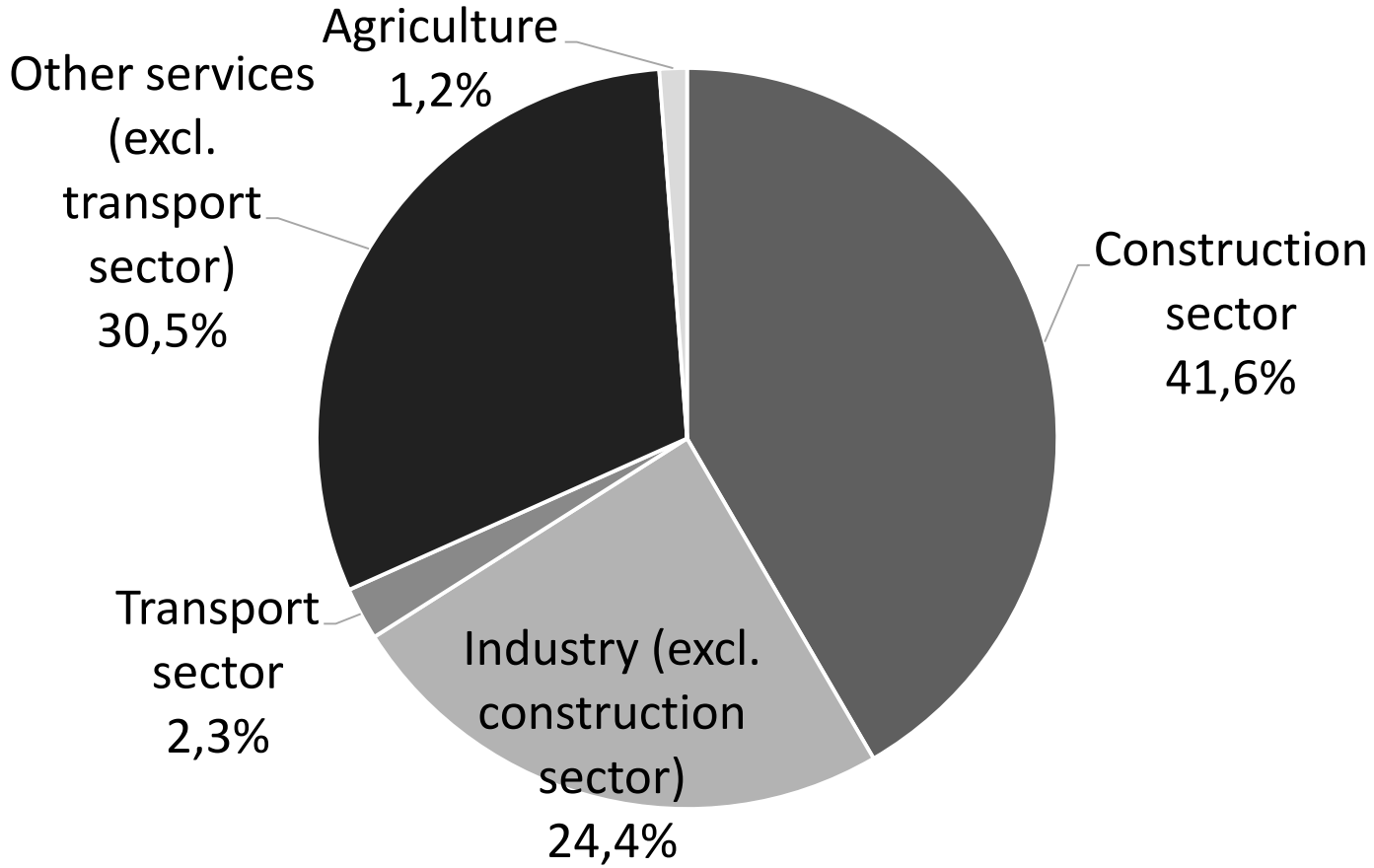
Intra-EU posting: Breakdown by sector of activity

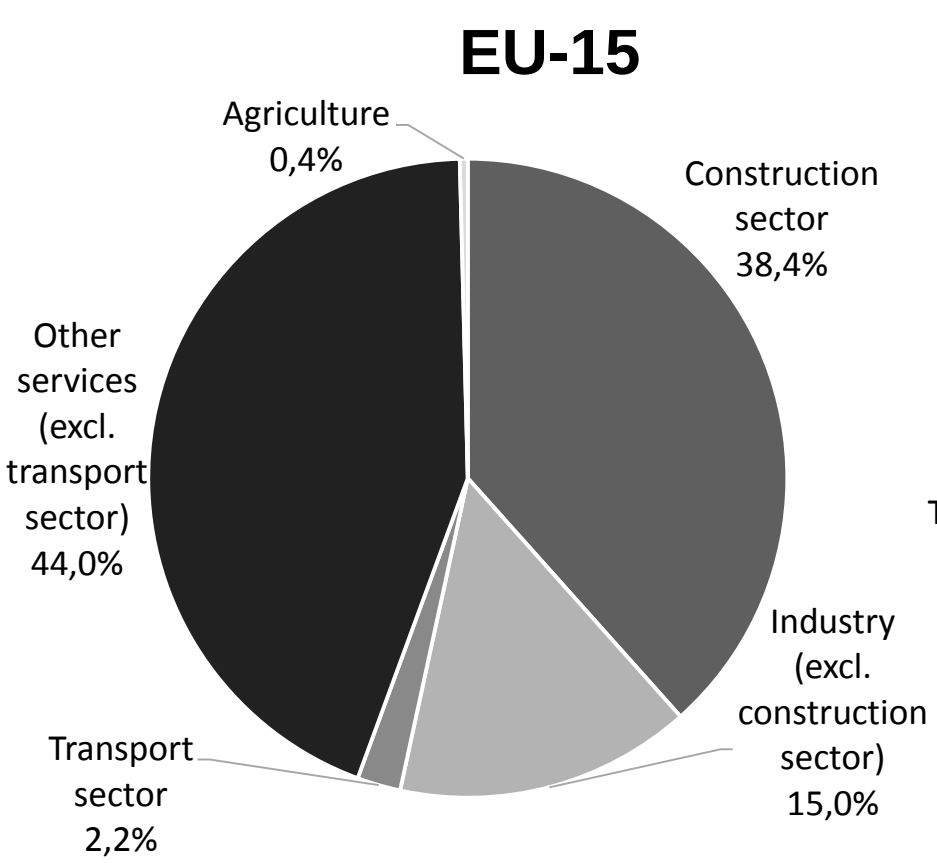
Strong concentration in the construction sector

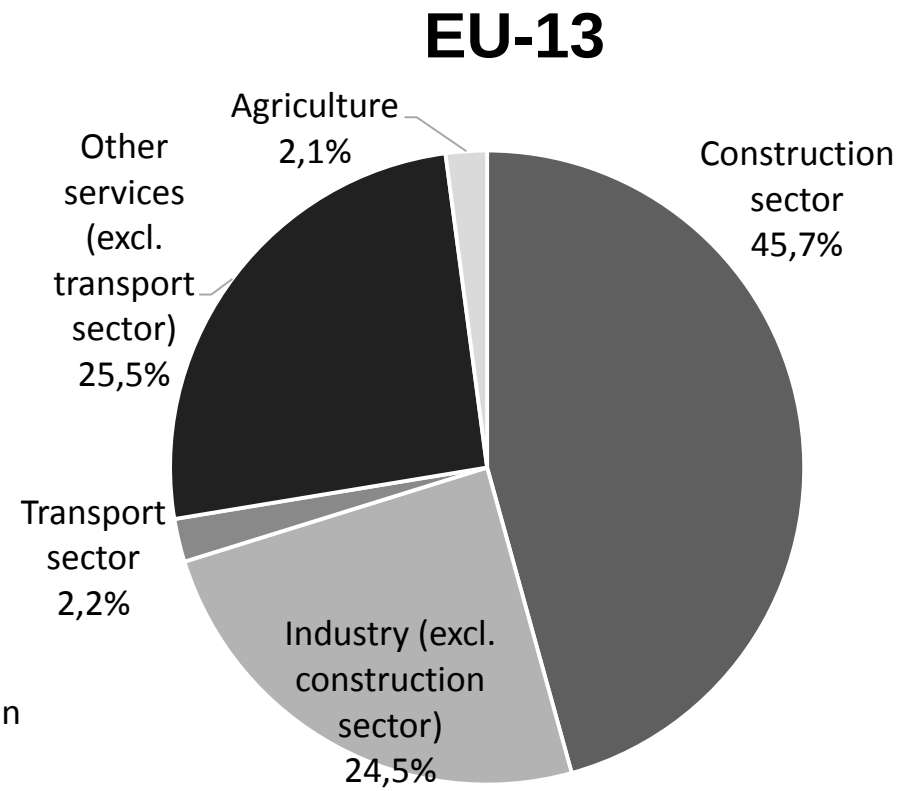


Source Pacolet and De Wispelaere, 2016

Intra-EU posting: Breakdown by sector of activity

Differences between sending EU-15 and EU-13





Source Pacolet and De Wispelaere, 2015

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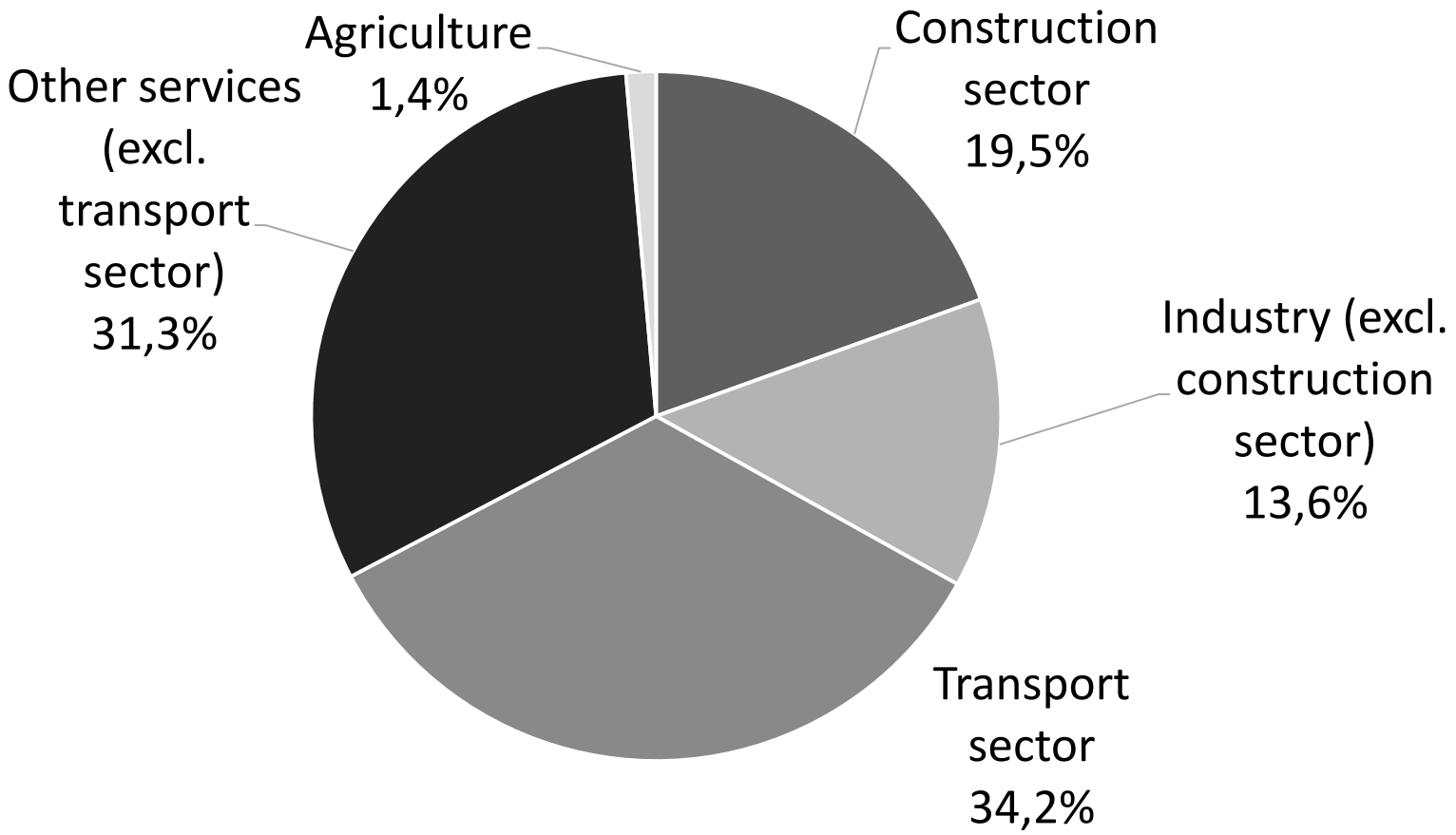
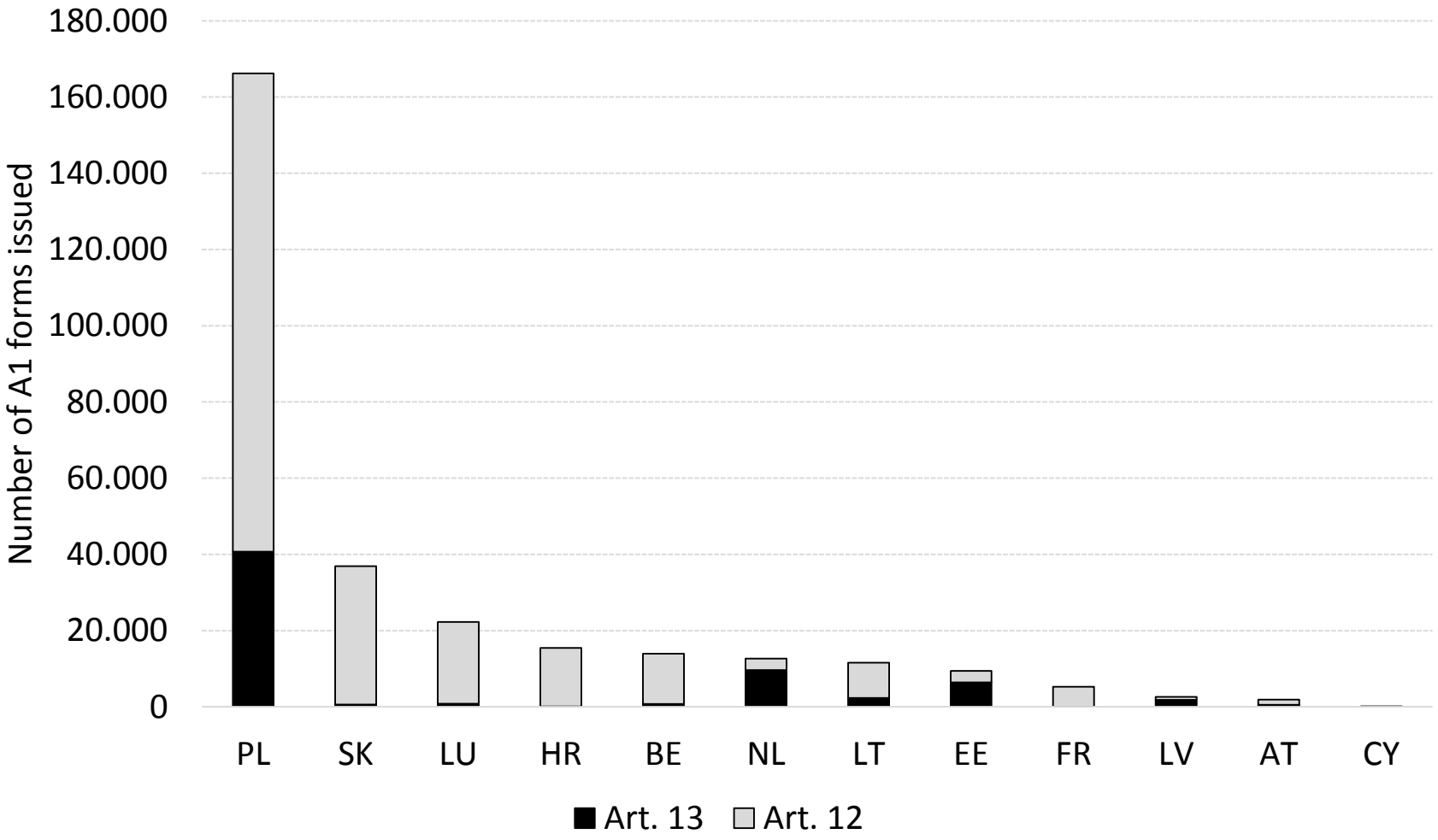
Persons active in 2 or more Member States: Breakdown by sector of activity

Strong concentration in the transport sector



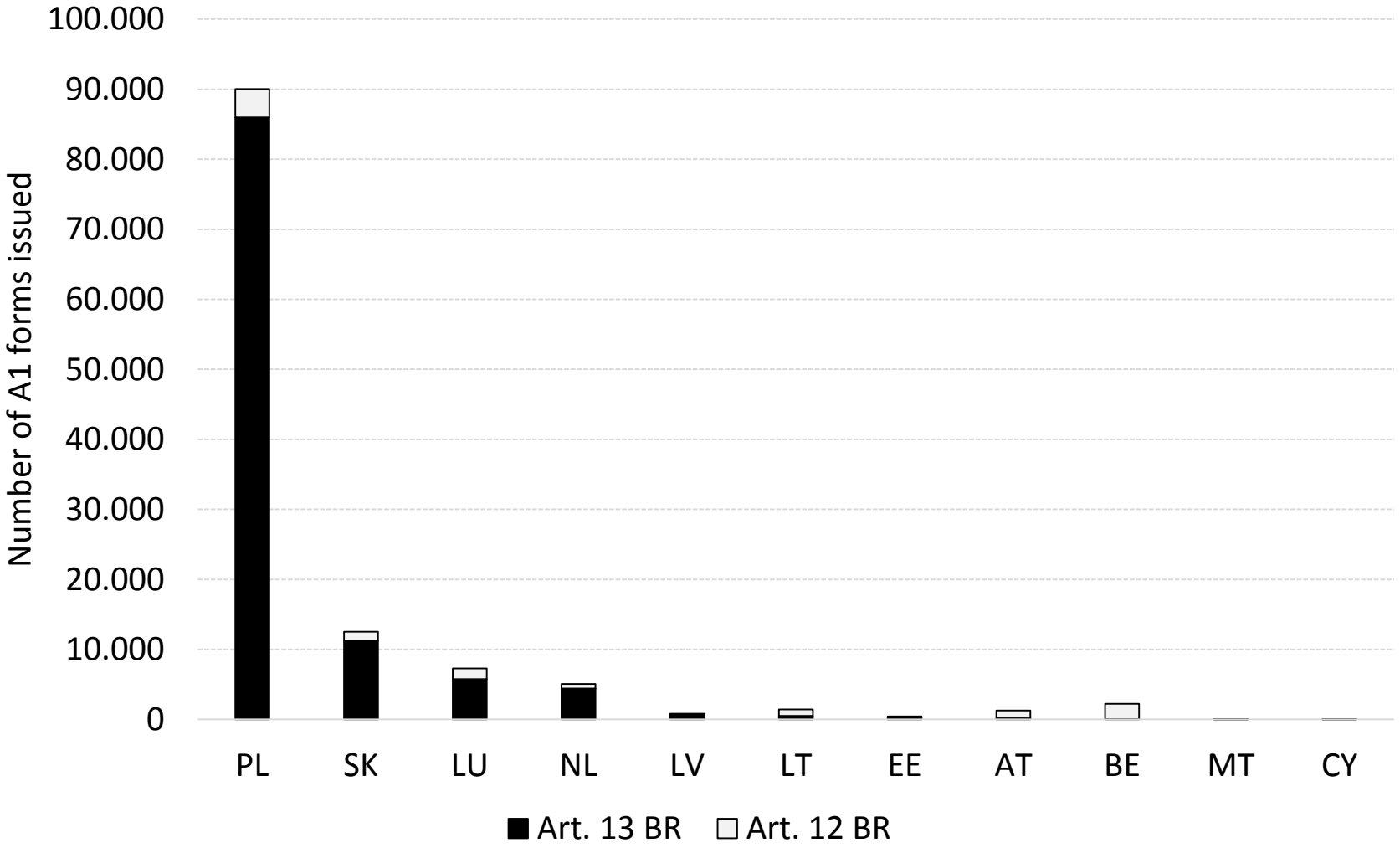
Source Pacolet and De Wispelaere, 2016

A1 forms issued to persons active in the **construction sector**



Source Pacolet and De Wispelaere, 2016

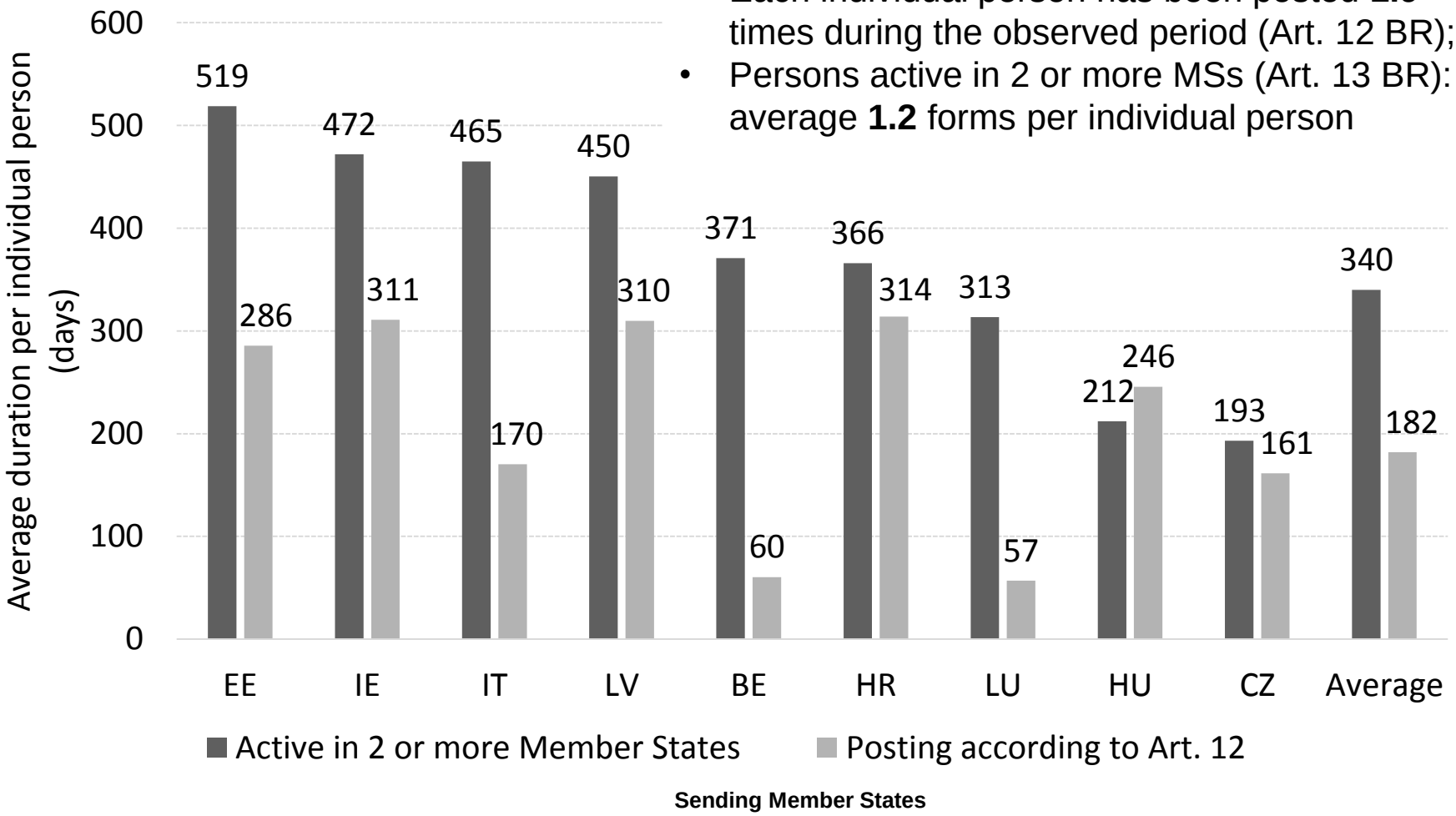
A1 forms issued to persons active in the **transport sector**



Source Pacolet and De Wispelaere, 2016

Posted workers and persons active in 2 or more Member States: average duration

- Each individual person has been posted **1.9** times during the observed period (Art. 12 BR);
- Persons active in 2 or more MSs (Art. 13 BR): on average **1.2** forms per individual person



Source Pacolet and De Wispelaere, 2016

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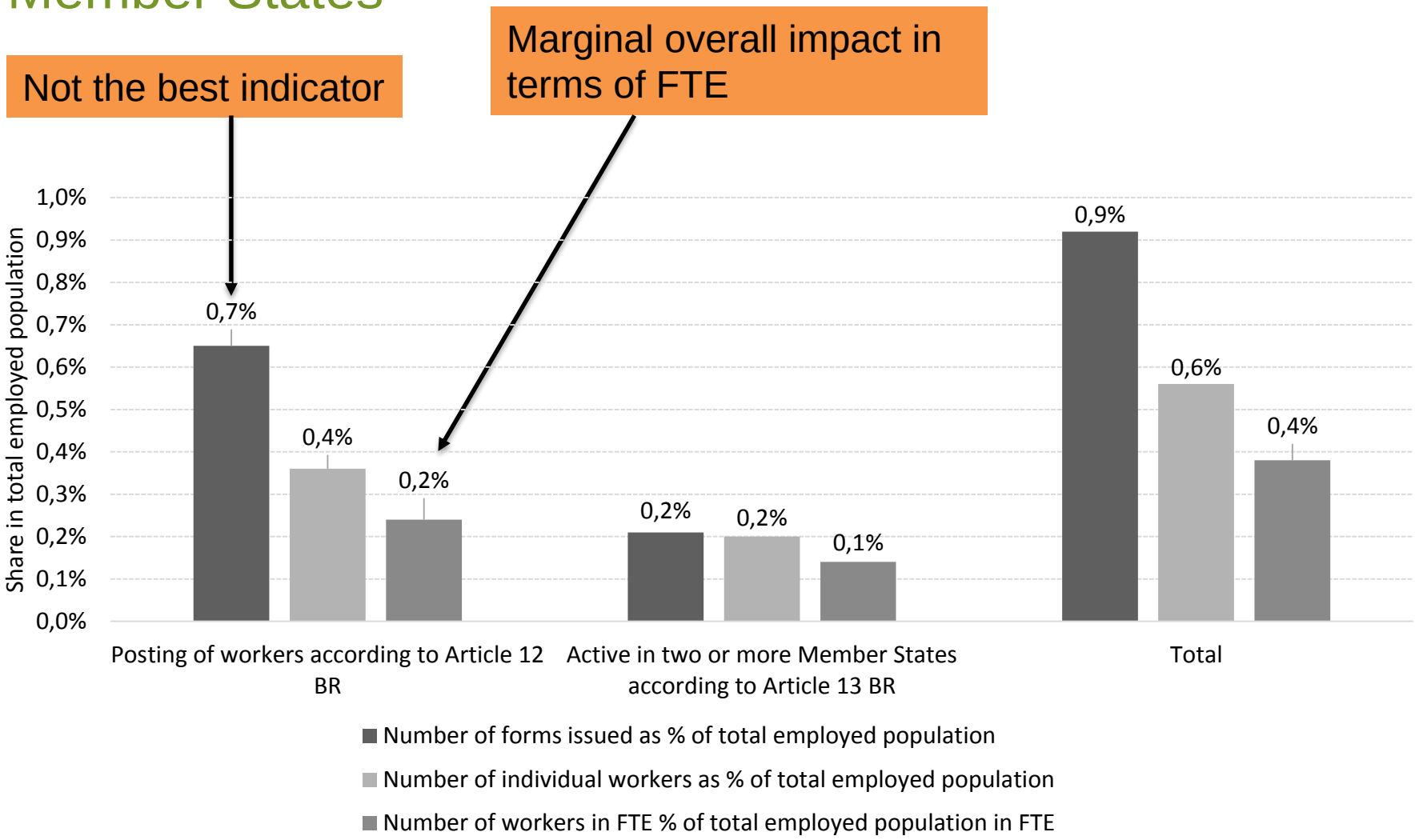
Size of intra-EU posting and persons active in two or more Member States



Source Pacolet and De Wispelaere, 2016

… but substantial for some countries and industries

Some Members States, and within these Member States some specific sectors, are in relative terms confronted with a significantly high percentage of outgoing and incoming posted workers

Overview of some national registration tools

- **Belgium:** 'LIMOSA' ; 'GOTOT-IN' and 'GOTOT-OUT'
- **France:** 'Déclaration préalable de détachement'
- **The Netherlands:** 'Melding grensoverschrijdende dienstverlening / Notification of cross-border services'
- **Luxembourg:** 'Communication de détachement de salariés' (CDS)
- **Austria:** the 'Meldepflicht' (Notification to the Central Coordination Office 'ZKO3')
- **Denmark:** the 'RUT'
- **Slovakia:** notification form
- **Slovenia:** notification form

Impact of intra-EU posting on the basis of national data

Source		2011	2012	2013	2014	2015	Share in employment receiving economy/sector
				Belgium			
				Number of A1 forms			
PD A1 Report BE	Total	125,107	125,264	134,340	159,749	156,556	3.5%
				Number of individual persons			
LIMOSA	Total	124,060	139,664	163,383	186,525	210,815	4.4%
	% change		*12.6%*	*17.0%*	*14.2%*	*13.0%*	
	Construction	45,276	57,461	85,572	114,096	130,597	33%
	% change		*26.9%*	*48.9%*	*33.3%*	*14.5%*	
GOTOT-IN	Total	81,011	88,042	140,408	122,580	143,045	3%
			8.7%	59.5%	-12.7%	16.7%	
				France			
PD A1 Report FR		160,532	161,954	156,490	182,219	190,848	
Déclaration préalable de détachement		144,411	169,613	212,641	228,649	286,025	1%
			17.5%	*25.4%*	*7.5%*	*25.1%*	
				Germany			
				Number of individual persons			
Soka-Bau	Construction	62,262	68,114	82,018	91,399	99,861	4%
	% change		*9.4%*	*20.4%*	*11.4%*	*9.3%*	
	Meat industry			89,608			38%

Source BE: ONSS; FR: Trésor-economics (2016); DE: Soka-Bau, Annual Report; Wagner and Hassel, 2016.

Conclusions

- A thin line between posted workers, migrant workers and frontiers workers;
- Number of posted workers under EU coordination rules ≠ Posted workers under Posting of Workers Directive;
- Over the past years, some new questions were included in the PD A1 questionnaire in order to obtain a more detailed overview of posting in the context of the Basic Regulation;
- Further consolidation of the data collection at EU level is needed;
- Data collection at EU level seems to be growing to maturity. Nonetheless, still incomplete information on the duration of postings, the precise economic sector of activity, the number of individual persons. Moreover, only data on the number of PDs A1 issued according to Article 12 are available from a receiving perspective;
- However, still a lot of open research questions: analysis of data available at national level;
- Data collection at European level reveals substantial differences between Member States and sectors of activity;
- Data collection reveals political sensitive issues as shift towards persons active in two or more Member States and self-employed persons.

References

- Pacolet, J. and De Wispelaere, F. (2016), *Posting of workers – Report on A1 portable documents issued in 2015*, Network Statistics FMSSFE.

- Pacolet, J. and De Wispelaere, F. (2015), *Posting of workers – Report on A1 portable documents issued in 2014*, Network Statistics FMSSFE.

- Pacolet, J. and De Wispelaere, F. (2014), *Posting of workers – Report on A1 portable documents issued in 2012 and 2013*, Network Statistics FMSSFE.

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