



3 November 2011

# Enforceability of Regulation 1612/68 (now 492/2011): main problems

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Annual Conference on the Free  
Movement of Workers:  
Main Problems with the  
Enforceability of Regulation  
1612/68 - 492/2011

3 November 2011

Bucharest

# Objectives

Familiarise you with the work of the AIRE Centre and with the recent reports of the network of experts on the free movement of workers, in order to provide a basis for our round-table discussion.

## 4 Topics:

1. The AIRE Centre's work
2. Quick overview of 26 Member States
3. Some statistical information gained from the reports
4. In-depth look at six problems that may deserve attention at Union level

# The AIRE Centre

- Mission: To promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights.
- Activities:
  - Providing free legal advice to individuals and other advisers and lawyers on the rights of EU migrants in the UK and their family members
  - Providing free legal advice on other issues under EU and Council of Europe law
  - Litigating cases before the European Court of Human Rights
  - Trainings, third-party interventions, consultations

# 400 cases of advice for EU migrants and their families each year

Recent example 1: Elena is a Romanian national and a pensioner, who worked her whole life in Romania. Her daughter, also Romanian moved to the UK to live with her British husband. Elena's daughter began working in the UK (law). Elena moved to the UK when she became disabled, in order to be with her daughter and son-in-law. A National Health Service hospital charged Elena for hospital care and refused to provide her with further care (that had been deemed clinically necessary) until she paid the bills for the previous healthcare she had received. She was being charged as an 'overseas' visitor because, she was told, as a foreigner she had 'no recourse to public funds'. It was clear that if she was a British Citizen, she would not be charged.



# Recent Example 2

Audra, a Lithuanian national, worked for a company in the UK from June 2006 until February 2011, when she went on maternity leave. Her maternity leave came to an abrupt end in July 2011 when the company ceased trading. She was deemed ineligible for Income Support (a cash benefit for lone parents) because she was no longer a 'worker'. A British Citizen in her situation would have received the benefit.

# Some Other Areas

- The rights of family members (and especially ‘other family members’ of EU migrant workers)
- The rights of estranged and divorced spouses of EU migrant workers
- Rights of the primary carers of the children in education of EU migrant workers
- Roma rights
- Prisoners’ rights

# Nature of the Obstacles Identified

- **Rare:** blatant obstacles to free movement (e.g. municipalities in Italy that provide certain cash benefits to Italian workers but not other Union citizens)
- **More common:** potential indirect discrimination (e.g. language requirements, only taking into account experience acquired in one Member State)
- **Other:** exploitation of Union citizens in other Member States

## Austria

- Sport: subsidies for teams with a certain number of Austrian players.
- Study grants – prior residence requirements.

## Belgium

- Problems for citizens who have worked in other Member States being able to prove that they are eligible to participate in certain back-to-work incentive programmes.
- Need to show a ‘connection’ to buy certain properties in Flanders.

## Bulgaria

- Access to information about rights.
- Exit bans imposed on Bulgarian citizens.

## Cyprus

- Requiring excessive documentation at the airport.
- Delays in granting residence documentation.
- Potential exploitation of migrant labour from other Member States.

## Czech Republic

- Problems getting documentation.
- Widespread discrimination in job advertising (1 in 6 adverts is discriminatory in some way).
- Quotas for Czech citizens on sport teams.

## Denmark

- Status of 'civil servant' reserved to Danish citizens.
- Quotas for Danish players on sport teams.
- Seniority and experience in the public sector.
- Potential exploitation of citizens of other Member States.
- Study grants.

## Estonia

- Language requirements for jobs.

## Finland

- Public-sector language requirements.
- Identity numbers for new workseekers.
- Access to certain benefits ('four-month rule').

## France

- Narrow definition of 'workseeker' (and expulsion of those who don't meet it).
- Prior experience gained in other Member States for the purposes of calculating seniority (now resolved through court judgments).



## Germany

- Third-country national family members of returning German workers.
- Benefits for workseekers.
- Potential inconsistencies in application of the public-serve exemption.

## Greece

- Scholarships for study.
- Financial incentives to have Greek nationals working on ships.
- Nationality of coaches on sport teams.
- Proving mastery of Greek for purposes of public-sector employment.

## Hungary

- Private-sector discrimination based on nationality.
- Potential for exploitation of citizens from other Member States.

## Ireland

- Recognition of foreign qualifications and references.
- Testing: 'Irish names'.
- Study grants.
- School-admission policies.

## Italy

- Recognition of experience from other Member States (including foreign-language teachers).
- Some locally-administered social advantages (e.g. welfare benefits).

## Latvia

- Language requirements (about 30% of all jobs in Latvia covered by national language legislation).
- Prior experience in other Member States (for public-sector seniority).

## Lithuania

- Similar issues about language requirements.
- Workseekers.
- Rights of residence for primary carers of children in education.
- Social scholarships.

## Luxembourg

- Recent interesting case: time spent as a registered workseeker in another Member State – reimbursement of social charges.
- Creation of a regional employment office.
- Language – job adverts in Luxembourgish
- Study grants.

## Malta

- Study grants.
- Workseekers.

## Netherlands

- Guidelines/rules on who is a 'worker': 50%/40%.
- Proposed language requirements for workseekers who have retained worker status.

## Poland

- Public-sector hiring: gap between theory and practice (1 out of 263 posts available to citizens of any Member State).
- Good practice on seniority.

## Portugal

- Ambiguity about seniority and experience acquired in other Member States.
- Public-sector hiring (job adverts).
- Sport – nationality quotas and fees.
- Municipal legislation on housing.
- Scholarships only open to permanent residents.

## Slovakia

- Proving knowledge of the language.
- Access to benefits (permanent residence).

## Slovenia

- No problems noted.

## Spain

- Public-sector hiring: experience gained in other Member States.
- Sport teams.
- Language requirements to benefit from mutual recognition of qualifications.

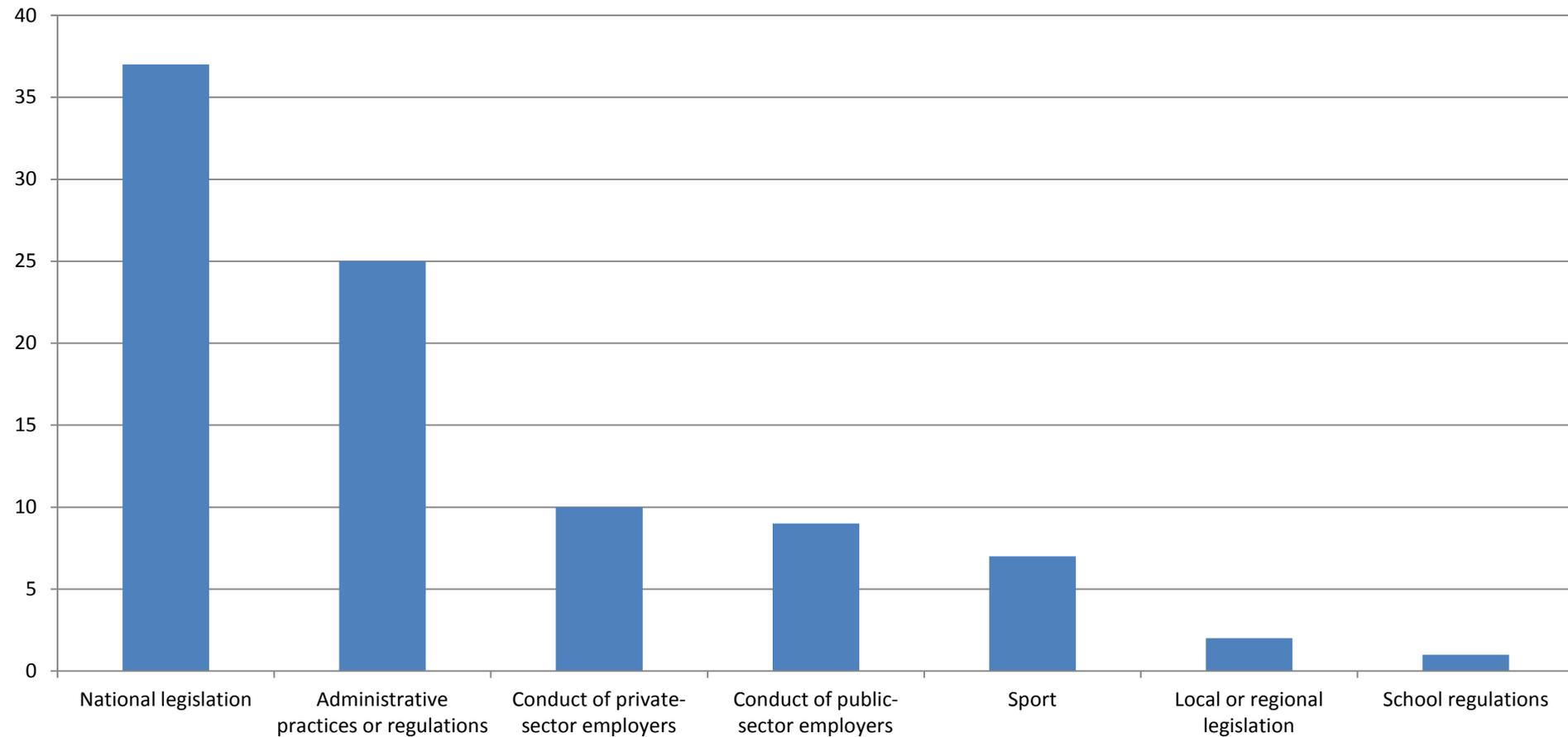
## Sweden

- Expulsion of workseekers (particularly Roma).
- Funding restrictions on sport clubs which may discourage free movement of workers.

## United Kingdom

- National case law on worker status.
- Potential for exploitation of migrant workers.

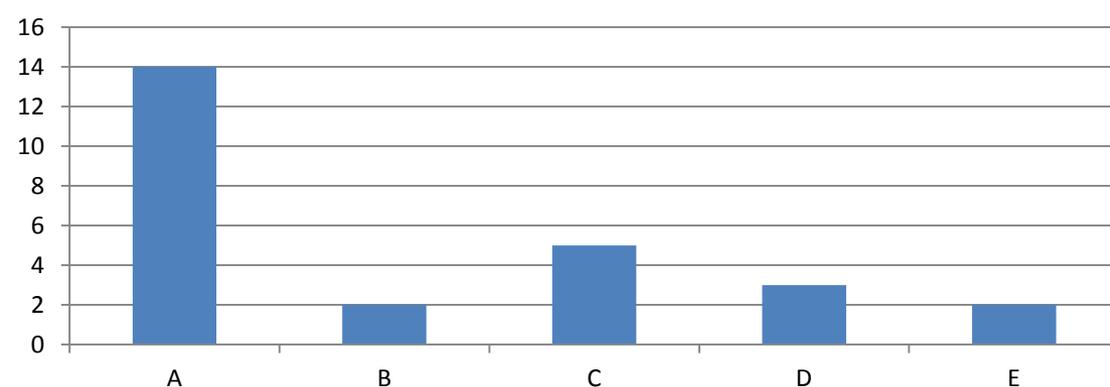
# Sources of the Problems



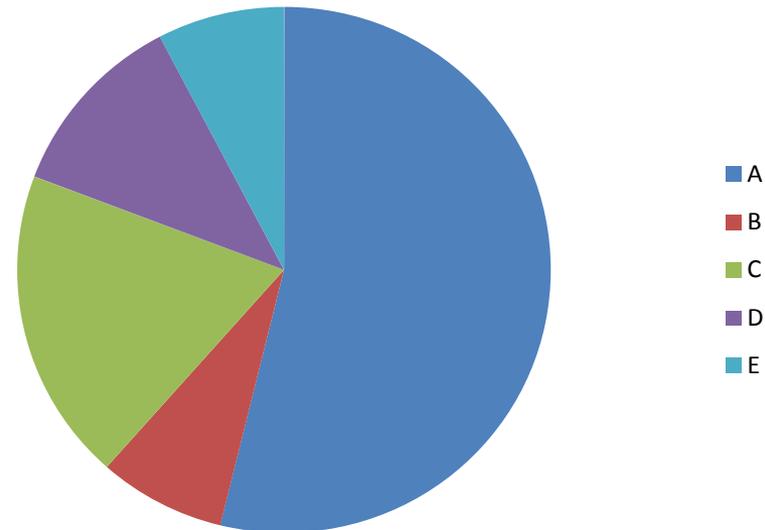
# Prohibition on Nationality Discrimination in National Law

- A. Those which explicitly include 'nationality' as a prohibited form of discrimination against workers in their national anti-discrimination legislation.
- B. Those which do not, but whose national anti-discrimination legislation contains a non-exhaustive list of grounds, meaning that it is possible to argue that nationality-based discrimination against workers violates national anti-discrimination law.
- C. Those Member States where respondents suggested it is possible to argue that nationality-based discrimination against workers constitutes discrimination on grounds of ethnicity or ethnic origin, making it unlawful under national law.
- D. Those Member States where respondents indicated that workers who suffer nationality-based discrimination can only rely on EU law (i.e. the Regulation). (There may of course be some overlap between categories B, C and D in practice.)
- E. Unclear responses.

## Number of Member States in Each Category

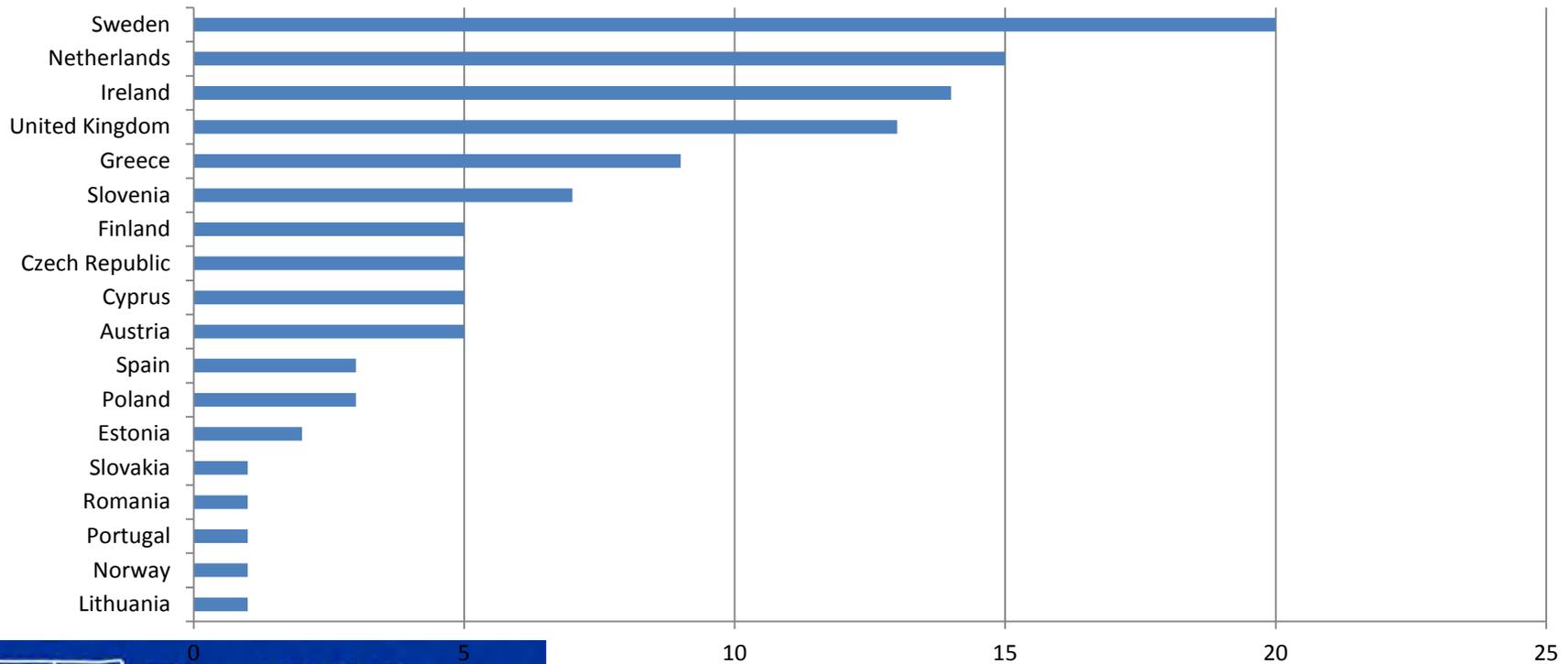


## Breakdown of Member States



# Information for Migrant Workers in their Languages

## Number of Foreign Languages in Which Information for Migrant Workers is Available



# Problem 1: Language Requirements

- Cyprus, Czech Republic, Estonia, Finland, Greece, Ireland, Latvia, Lithuania, Luxembourg and Poland.
- Discriminatory job adverts.
- Mismatches between language requirements and the tasks associated with a job.

# Problem 2: Public-Sector Hiring

- Denmark, Germany, Poland and Portugal.
- Gap between theory (most jobs open to all) and practice (job adverts indicate that host Member State nationality is required).
- Inconsistencies between public sector employers.

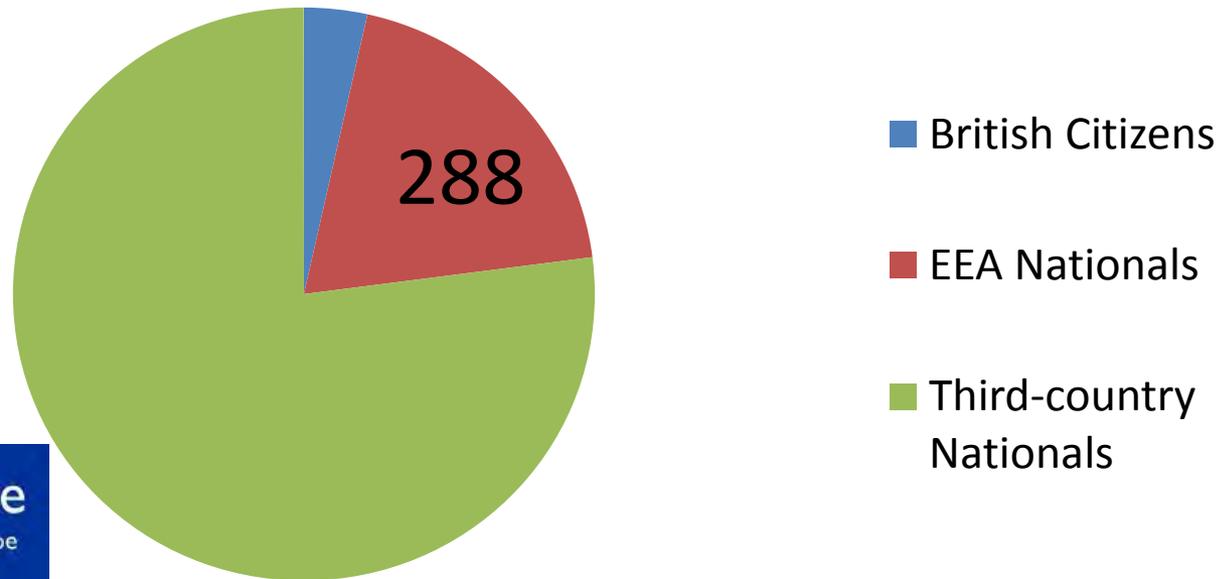
# Problem 3: Advantages Based on Prior Experience

- Denmark, France, Italy, Latvia, Portugal, the Netherlands and Spain.
- Taking into account similar experience in other Member States for hiring.
- Taking into account similar experience for the purpose of seniority.
- Good examples:
  - French case law
  - Polish rules

# Problem 4: Social Dumping, Possible Exploitation

- Cyprus, Denmark, Hungary, Ireland and the United Kingdom.

**People Referred to the UK National Referral Mechanism (April 2009 - March 2011)**



# Problem 5: Sport

- Austria, the Czech Republic, Denmark, Finland, Greece, Italy, Spain and Sweden.
- Subsidies.
- Formal quotas.
- Informal arrangements on teams.
- Restrictions on club funding.

# Problem 6: Workseekers

- Finland, France, Germany, Luxembourg, Malta, Poland and Sweden.
- Access to benefits designed to facilitate labour-market access.
- Expulsions.

# Techniques for Identifying Obstacles

- **Czech Republic:** ombudsman's study of job adverts (1 in 6 is discriminatory).
- **Ireland:** testing for discrimination (e.g. CVs with 'national names' and 'foreign names').
- **United Kingdom:** statistics on human trafficking and exploitation.