



The Centre for Migration Law of the Radboud University Nijmegen, The Netherlands, coordinates under the supervision of the European Commission a European Network on Free Movement within the European Union.

One of the activities of this Network is the annual production of a European report on the implementation of EU free movement law in the Member States. This report is published on the website of the Commission:

<http://ec.europa.eu/social/main.jsp?catId=475&langId=en>



Annual Conference on Free Movement of Workers

17-18 October 2013





Keynote speech on free movement of workers

Elsbeth Guild



What Free Movement of Workers do EU Member States want?

Annual Conference: Free Movement of Workers, Vilnius 17 – 18 October 2013

Jean Monnet Professor *ad personam* Elspeth Guild, Radboud University, Nijmegen

The Organizing Principle: EU workers' and employers' choice

- The right to move – what obstacles remain, the Schengen legacy;
- The right to remain – the three month rule and the right to reside;
- The right to work and exercise economic activities;
- The organizing principle for third country nationals: state authorities' choice in pursuit of state interests defined by them.

Visible and Invisible EU Citizens

- Visible to whom: home state and state of work/residence?
- Regulated residence – population registers and acts of belonging
- The consequences of registration: calculating time limits for social protection; the right to reside; protection against expulsion;
- Local authorities/tax authorities.

Places of Visibility

State borders: the Schengen regime ins and outs;

Just inside state borders: police checks;

Internal borders: state authorities within the Member States – labour inspectorates, authorities responsible for recognition of diplomas; benefits offices; schools; criminal justice authorities;

Beyond the state: consular offices when third country national family members make visa applications; EU citizens in danger abroad;

8,000 letters to Europe Direct every year from EU citizens seeking to exercise their right to move and work.

Places of Invisibility

- Circular workers;
- Self employed and unregulated professions;
- Services, provision and receipt;
- Governance and the ungoverned?



Following Remittances

- EUROSTAT: the lion's share of EU remittance outflows in 2010 attributed to intra-EU flows;
- Major recipients of remittances: Spain, Poland, Portugal and Romania;
- Impact on current account deficits: reduction in Bulgaria and Romania between 158% and 45%;
- Net recipients of remittances: Poland, Romania, Portugal, Bulgaria, Lithuania, Sweden, Slovakia and Estonia.

A Genuine EU labour market?

- The insidiousness of discrimination on the basis of nationality;
- The benefits/burdens debate on EU mobile workers and their families – what does it mean to try to calculate advantage and disadvantage? The criteria used in the discussions;
- The seductive attraction of the ‘abuse’ allegation;
- Mechanisms of empowerment: the problem of the individual and the power of the reluctant state authority;
- Redressing the balances? Recalibrating the power relationships?



Presentation of the Annual report 2012-2013

Ryszard Cholewinsky



**Free Movement of Workers Network
Annual Conference
Vilnius, 17-18 October 2013**

Network Annual Report 2012-2013

Ryszard Cholewinski
Labour Migration Branch
(MIGRANT)
International Labour Office
Geneva

Presentation outline

- Directive 2004/38: Entry, residence, departure and remedies
- Free movement of Roma workers
- Family members and reverse discrimination
- Equality of treatment
- Access to employment in the public service
- Specific issues
- Application of transitional measures
- Conclusions

Directive 2004/38:

Entry, residence and departure and remedies

- New rules in some MS on implementation of Directive 2004/38
- Residence: Issues relating to registration
 - Too many documents still required in some MS
 - Registration of residence and access to public services and benefits
 - Relationship between registration and residence rights, e.g. in protection against expulsion, proving residence periods
 - Phenomenon of homeless EU workers / job-seekers
- Departure: EU-2 nationals continue to predominate in decisions concerning loss of residence and expulsion
- Remedies: Discrepancies in some MS (e.g. Belgium, Ireland)

Free movement for Roma workers

- EU citizens of Roma origin continue to use free movement rights to escape poverty, marginalization and discrimination
- EU Roma workers in EU MS destination experience disadvantages in the labour market
 - Difficulties in demonstrating their status as “workers”
 - Possess generally lower levels of education and skills
 - Some reported cases of human trafficking
 - Experience discrimination and greater tendency to expulsion on grounds relating to public order or being a burden on the social assistance system of a MS
 - Transitional arrangements in several MS exacerbate the situation of Roma workers

Family members and reverse discrimination

- Continuing tendency to treat third-country national family members under the general immigration law rather than as persons with free movement rights under EU law
- EU nationals returning home with third-country national family members after a period of residence in another MS are subject to more rigorous and systematic checks
- The definition of Article 3(2) “other” family members subject of discussion in several MS after C-83/11, *Rahman*
- In general, C-34/09, *Ruiz Zambrano* being applied restrictively
- Reverse discrimination persists in several MS and has been re-introduced in Belgium
- Greater focus on abuse of rights, i.e. combating fraud or marriages of convenience
 - New development: fake statements by EU citizens of paternity of children so that they become nationals of EU MS and thus can provide third-country national mother with right of residence

Equality of treatment

- Austerity measures have resulted in a drive by some national authorities to limit access to social assistance and benefits, including stricter scrutiny to end residence
- Most issues brought to light in national reports concern indirect discrimination linked largely to residence requirements
- Most cases of discrimination in respect of wages and working conditions concern EU-10 workers
- State authorities need to play a greater role at both origin and destination in informing EU workers of their rights

Access to employment in the public service

- Continuing problems for EU workers to access employment in the public service in many EU MS in both law and practice
- Significant practical barriers include strict language requirements (e.g. Estonia, Lithuania and Poland)
- Austerity measures have also resulted in restricted access to public service competitions (e.g. Portugal)
- Need for improved statistical information in many MS on number of non-nationals employed in public service and monitoring of relevant administrative practices governing employment in the public sector

Specific issues: Academic and maritime sectors, sports, and access to study grants

- Academic and maritime sectors: Continuing restrictions in some MS regarding access to posts in these sectors exacerbated in practice by strict language requirements
- Sports: Mixed trends in respect of quotas for foreign players
 - In some MS, these quotas have been removed
 - In other MS, quotas have assimilated nationals and EU citizens
 - However, in other MS, the quotas for other than 'home-grown' players rule have been tightened considerably
- Access to study grants: Response to C-542/09, *Commission v. Netherlands*
 - Mixed responses: Some MS have removed the residence requirements while others have replaced them (or plan to do so) with other requirements to limit eligibility for grants

Application of transitional measures

- Transitional measures applicable to Bulgarian and Romanian workers come to an end on 1 January 2014 in following MS
 - Austria, Belgium, France, Germany, Luxembourg, Malta, Netherlands, Spain (in respect of Romanians), UK
- Croatia acceded to EU on 1 July 2013 and 13 MS have decided to impose transitional arrangements on Croatian workers
 - Austria, Belgium, Cyprus, France, Germany, Greece, Italy, Luxembourg, Malta, Netherlands, Spain, Slovenia, UK (i.e. 10 of EU-15 and 3 EU-10)
 - Croatia has responded by applying restrictions on access to its labour market for nationals of these 13 MS

Conclusions

- 1 January 2014: End of remaining transitional restrictions on free movement of workers for nationals of Bulgaria and Romania
- EU-10 workers still more likely to be subject to discrimination in respect of wages and working conditions
- Impact of austerity measures in some EU MS on access to employment, accommodation and social protection for EU workers
- Continuing shortcomings in treatment of third-country national family members of EU workers in respect of family reunification, residence, access to employment
- Growing role of ombudspersons in ensuring that EU workers and their family members can enjoy their rights under EU law

Thank you for your attention!

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Presentation on new Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

Gillian More





Proposal for a Directive to facilitate the exercise of rights conferred on workers in the context of freedom of movement for workers

Gillian MORE

European Commission

DG Employment, Social Affairs and Inclusion



Making the rules on Free Movement of Workers work better

- 1. Why this proposal?*
- 2. What are its constituent elements?*
- 3. What has been the focus of discussions with the co-legislators so far?*



An impressive set of rights on paper

*Freedom of
movement of
workers*

Article 45 TFEU

Regulation (EU) No 492/2011

Directive 2004/38/EC

**Case-law of the Court of
Justice**

Limited derogations

Public sector

Transitional arrangements

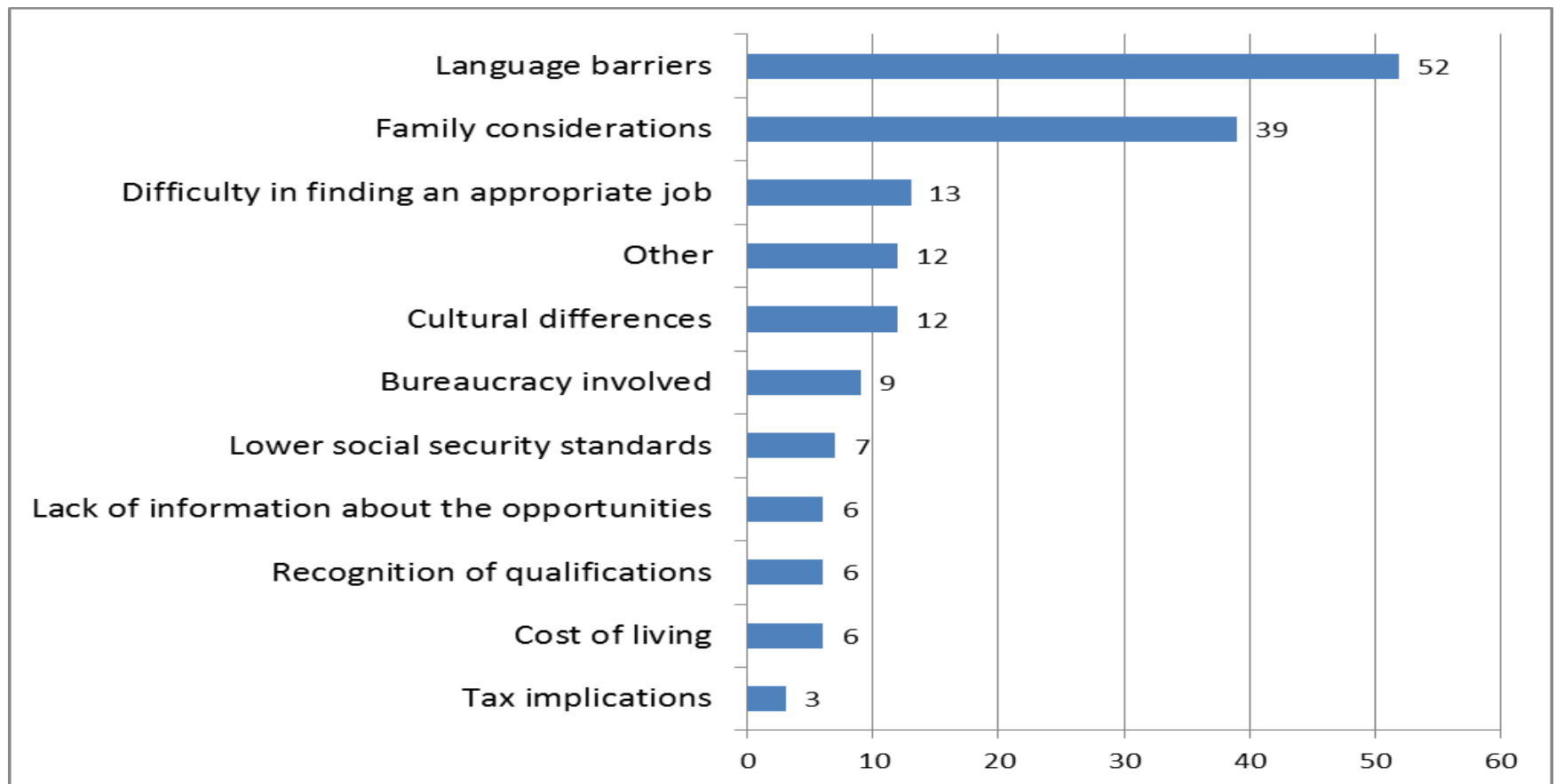
Language requirements

A disappointing reality

Despite more than 40 years of freedom, only 3% of EU citizens are living and working in another MS

0.35% of intra EU mobility per year within EU27
compared with
2.5% per year in the US

Main practical difficulties for working in another EU MS (2011, EB on Single Market)



Some facts - obstacles

Cultural

Language

Family

Social links

Some facts - obstacles

Administrative

*Access to
information*

Bureaucracy

*Tax/social security
changes*

Some facts - complaints

Europe Direct

10,158 information requests in 2012-13

Solvit

1/3 of cases

CHAP

Around 300 cases per year

Some examples of problems

Recognition of professional experience

Language requirements

Job advertisements

Recruitment conditions

Pay differentials

Social and tax advantages

Working conditions

EU Citizenship Report 2013

Citizens do not know what to do when their rights are not respected

***51%** feel they are not very well informed whilst **23%** feel that they are not informed at all about what they can do when their rights as an EU citizen are not respected*

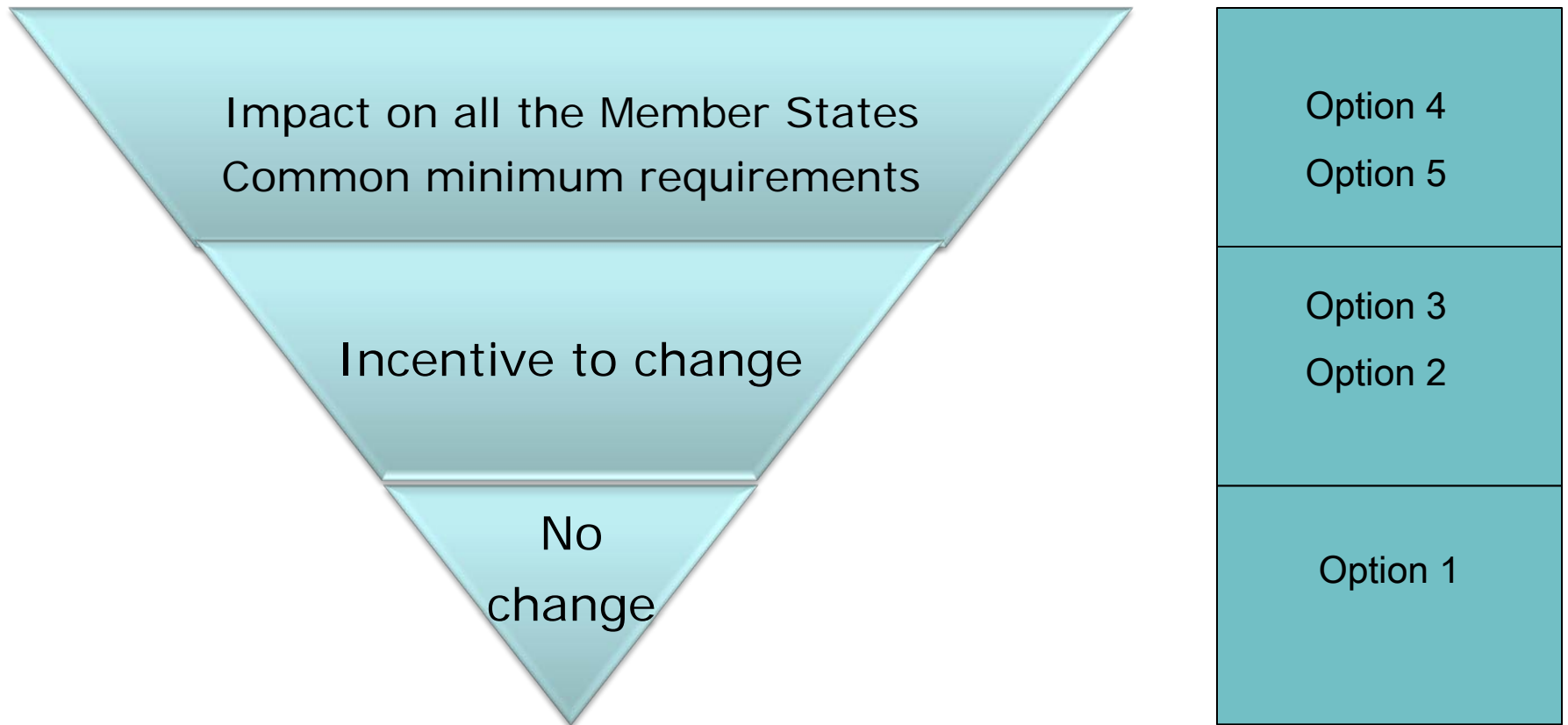
Consultation process

- *The consultations started in October 2010 and ended in October 2012 with the presentation of a non-paper to the members of the Advisory Committee on Free movement of workers (representatives of Member States and of social partners at national and European level).*
- *Public consultation (from 17/06/2011 to 12/08/2011)*
- *Network of experts on free movement of workers (Evaluation reports in October 2010 and March 2012).*

The options considered

Option1	Baseline scenario
Option2	Common guidance documents
Option3	Commission's recommendation to member States
Option4	Directive introducing support measures for EU migrant workers
Option5	Directive introducing an enhanced protection for EU migrant workers

The options considered - Impact






Commission proposal for a Directive to facilitate the exercise of rights in the context of free movement of workers (COM (2013) 236 of 26.4.13)

"Support Measures for migrant workers"


3 principal elements:

- 1. Assistance via a designated national body;*
- 2. Better information provision at national level;*
- 3. Ensuring effective protection of rights.*

Article 5: a designated national "FMOW body"



Provision of legal and/or other assistance to workers...and their family members in pursuing their complaints



Provision of information on any issue concerning national implementation of FMOW rules



Liaison and cooperation with EU-level bodies such as Your Europe and SOLVIT

"FMOW body": flexibility for national implementation

" a structure, a body or bodies"

"may form part of agencies at national level with similar objectives"

Possibility under Article 8(2) to extend competence to cover discrimination under Article 18 TFEU

Provision of Information: Article 5(2)(d) and Article 7

Art.
5(2)(d)

- FMOW body to publish information on national implementation of EU rules

Art. 7(1)

- Duty on MS to provide information to all stakeholders about rights conferred by Directive and associated EU rights

Art. 7(2)

- Duty as to how the information should be provided: "clear, easily accessible, ...up-to-date".



Effective Protection of Rights: Article 3

Standard formulation from Equality directives

- *Means of redress for breach of rights*
- *Such remedy must be effective, dissuasive and proportionate*
- *National procedural rules must comply with principles of equivalence and effectiveness*



Assistance with Protection of Rights: Article 4

Standard formulation from Equality directives

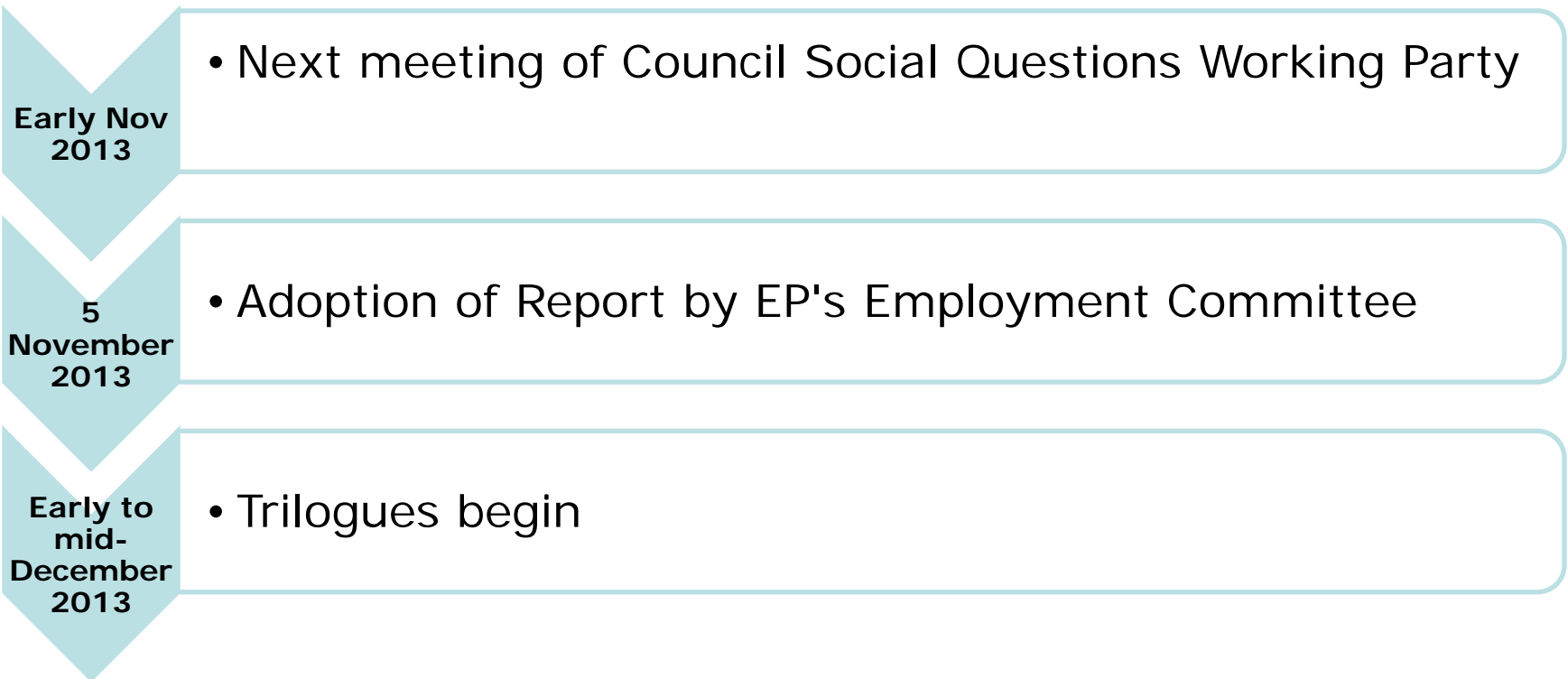
- *Right of associations, organisations or other entities – with a legitimate interest in accordance with criteria laid down in national law - to represent migrant workers in judicial and/or administrative proceedings in order to ensure enforcement of rights*

Focus of the discussion with the co-legislators so far....



Issue	Discussions
Terminology	"migrant worker", "mobile worker", "EU worker"
	"discrimination" and "unjustified restrictions on free movement"
Material scope	Is the scope of Regulation 492/2011 adequately summarised in Article 2? Can anything be added?
Defence of Rights	Is there a need for a specific provision on remedies/sanctions?
Action of associations	Are differences between national labour law procedures adequately recognised?
"FMOW Body"	How to define the body; How to refer to existing bodies; Need to define legal assistance?

Envisaged Time-line for the proposal





Presentation on Single European Labour Market

Yves Pascouau



Making Progress towards the Completion of the Single European Labour Market

FMoW Conference – 17 October 2013

Yves Pascouau

European Policy Centre

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“Arrangements that allow those who have only recently arrived in a Member State and have never been employed or paid taxes there to claim the same social security benefits as that Member State’s own citizens are an affront to common sense”

Letter of the Ministers of Interior from Germany, The Netherlands, Austria and United Kingdom to the Irish Presidency of the Council



Cameron: Immigrants have 'no absolute right' to benefits – *The Guardian* 25 March 2013

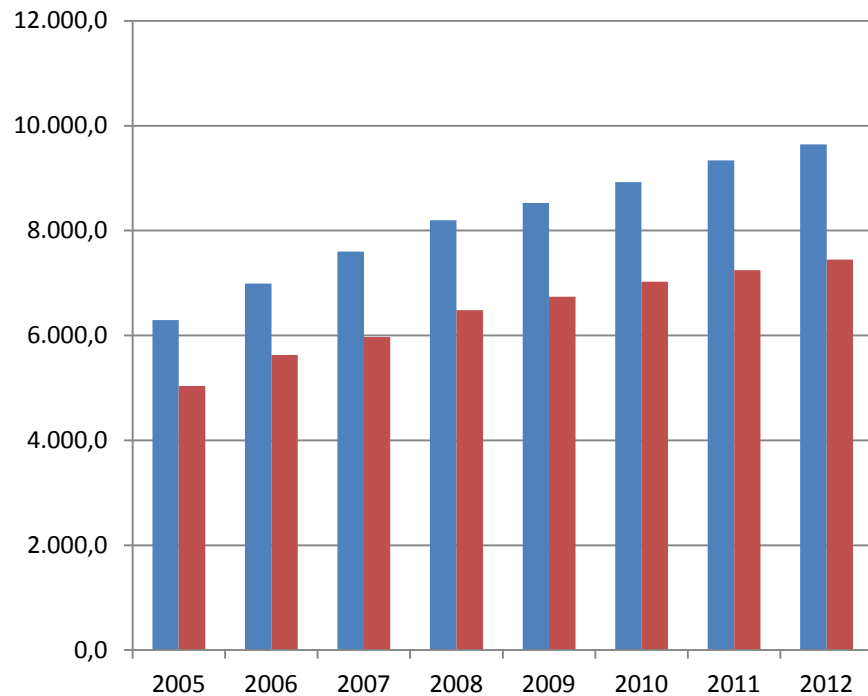


Structure of the Presentation

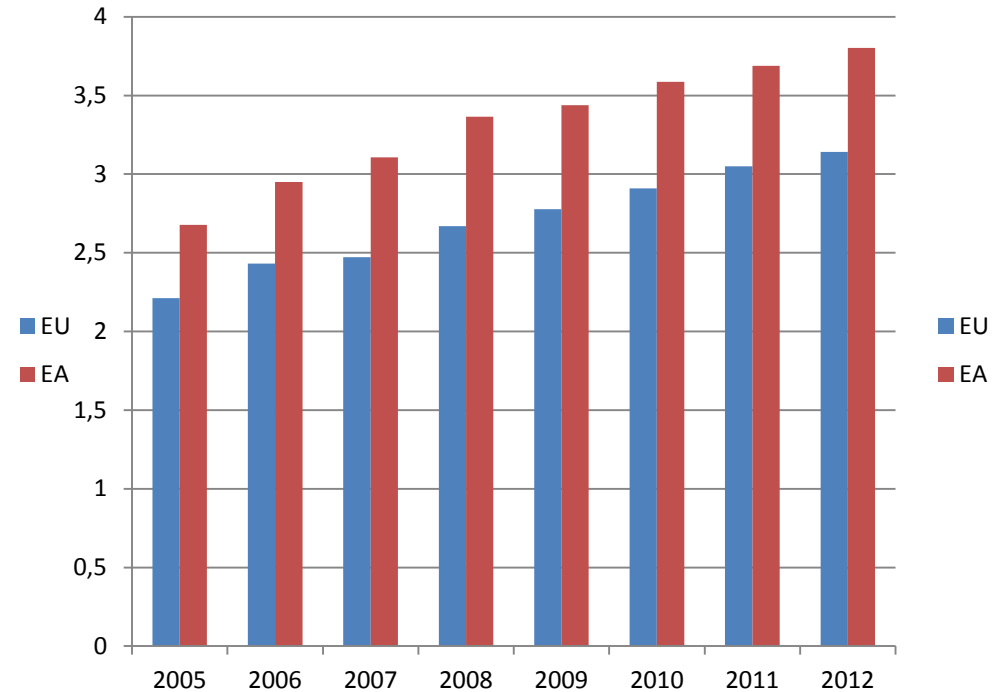
- 1. Trends and motivations**
- 2. Costs and benefits of mobility**
- 3. Policy recommendations**

Trends - Evolution of mobility in the EU

EU citizens aged 15-64 living in another EU country, stocks

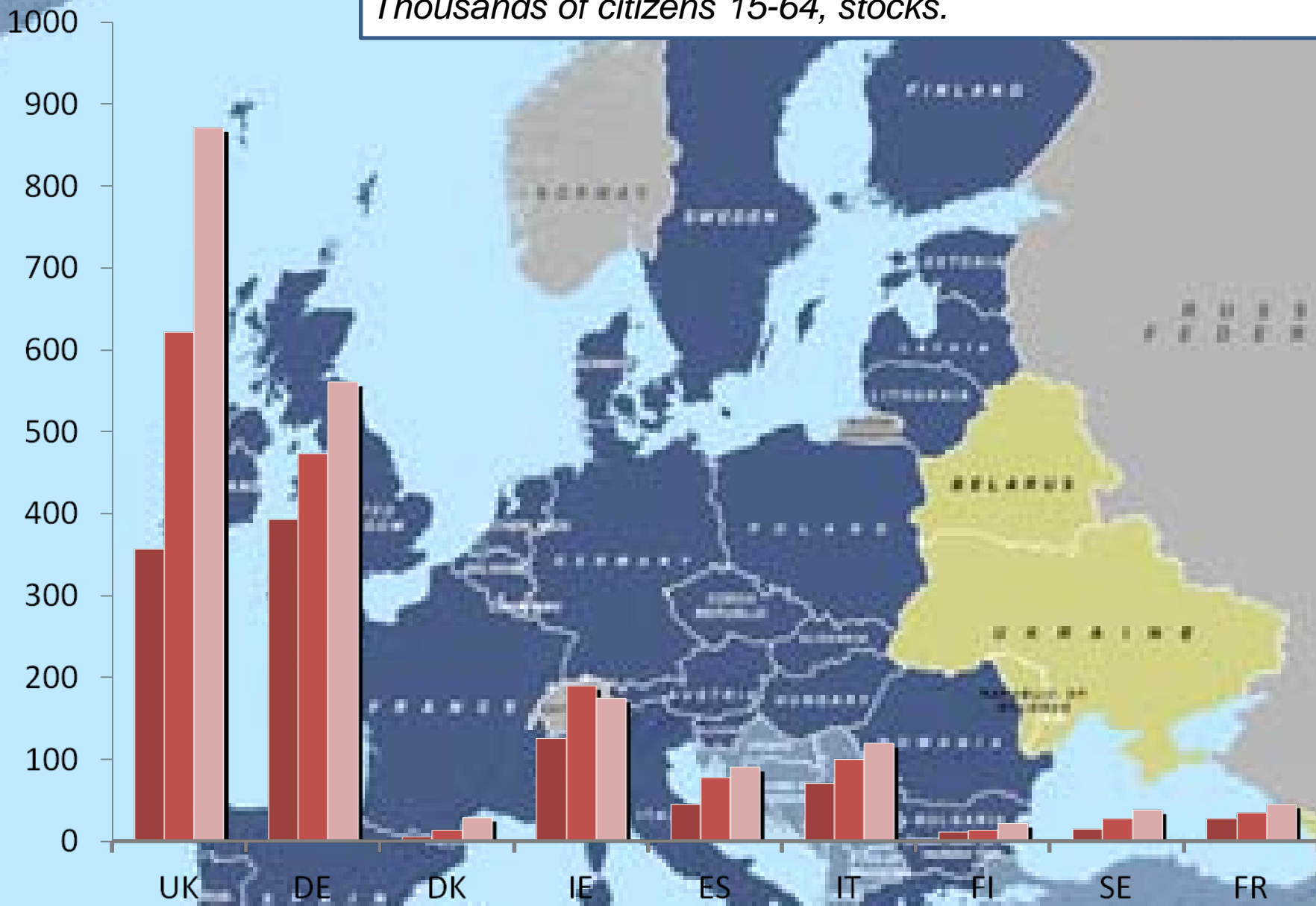


EU citizens aged 15-64 living in another country, %

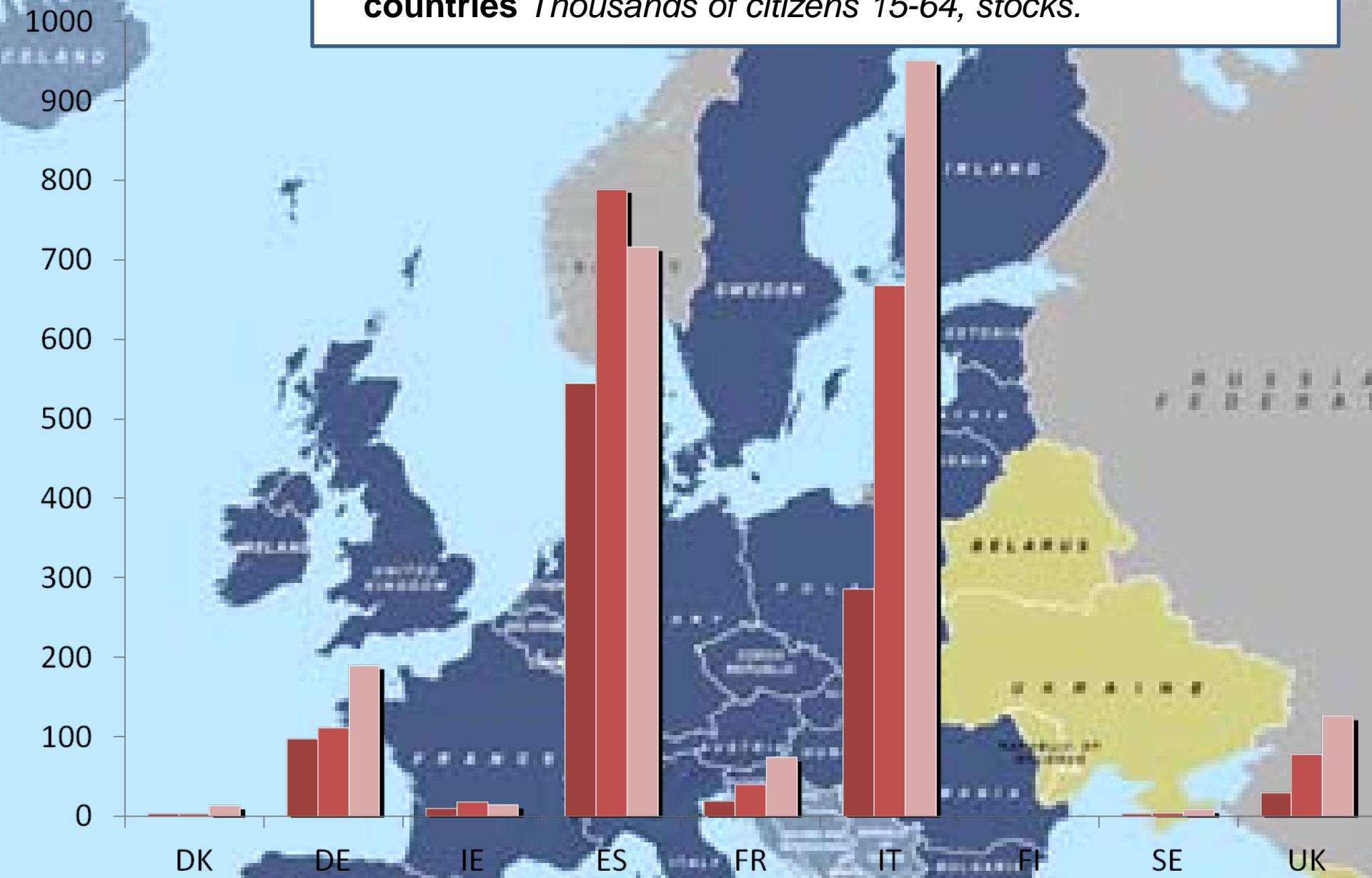


The northern East-West corridor: EU8+citizens from Malta and Cyprus in receiving countries

Thousands of citizens 15-64, stocks.

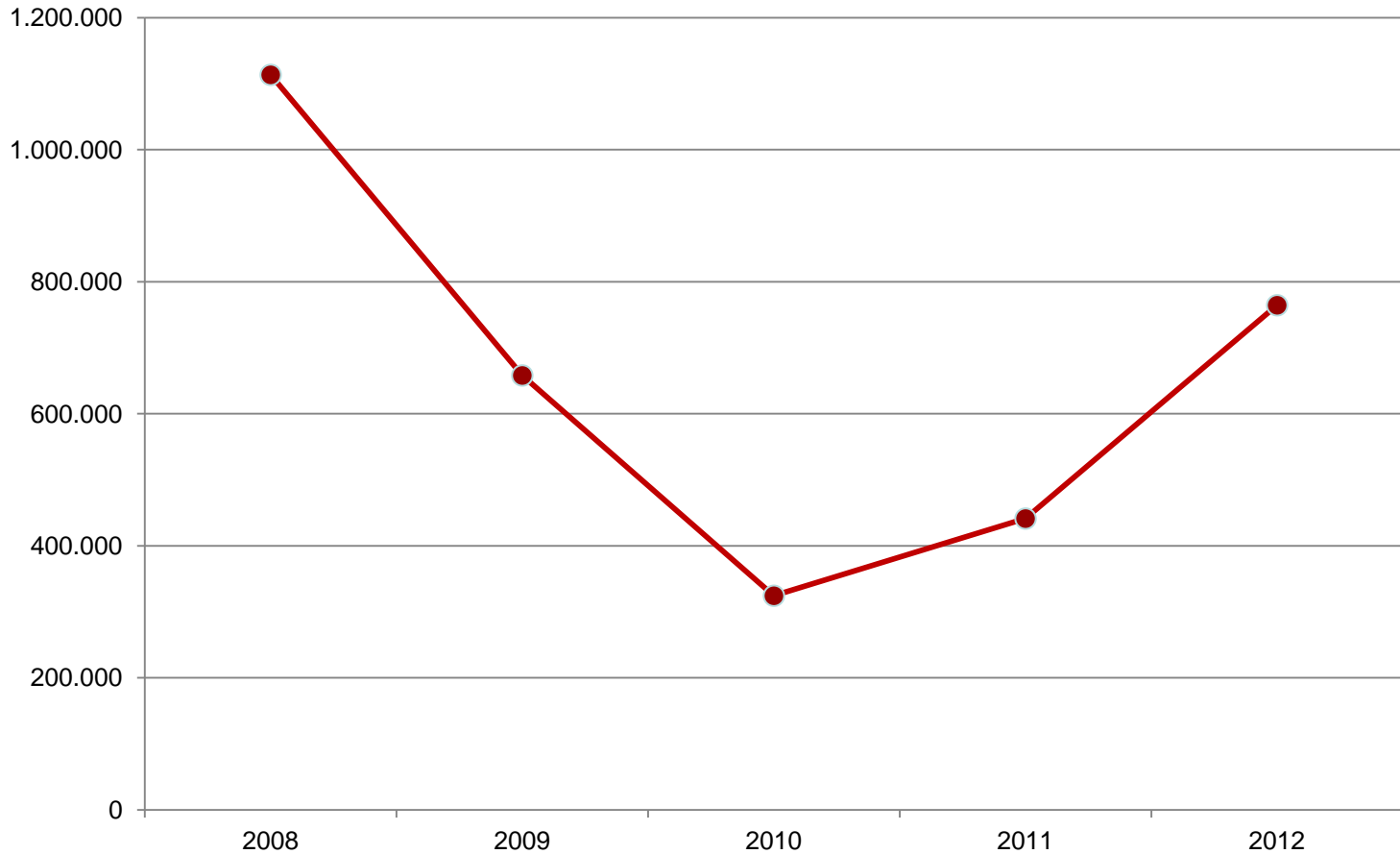


The southern East-West corridor: EU-2 citizens in receiving countries *Thousands of citizens 15-64, stocks.*

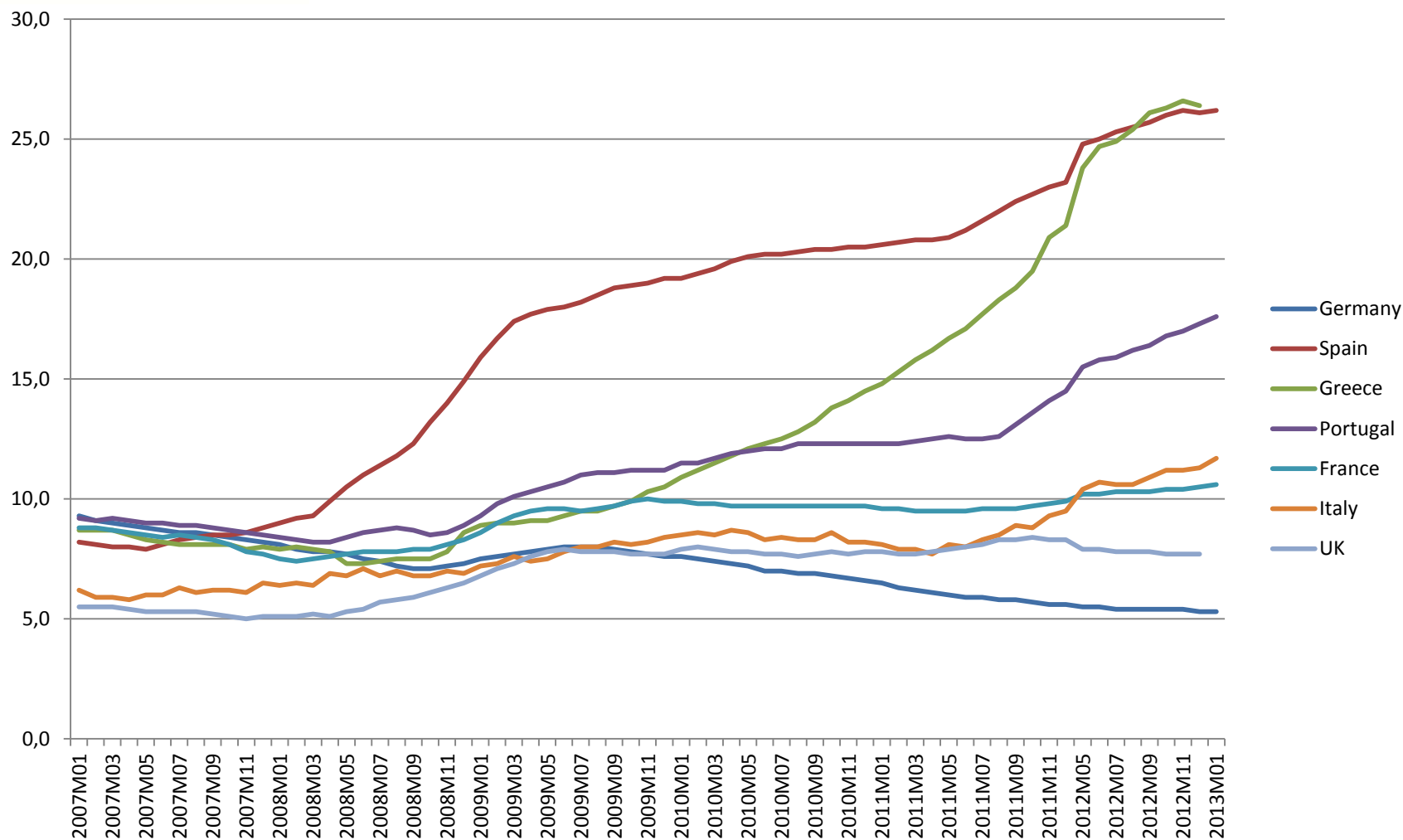


EU 27 net flows between 2008 – 2012

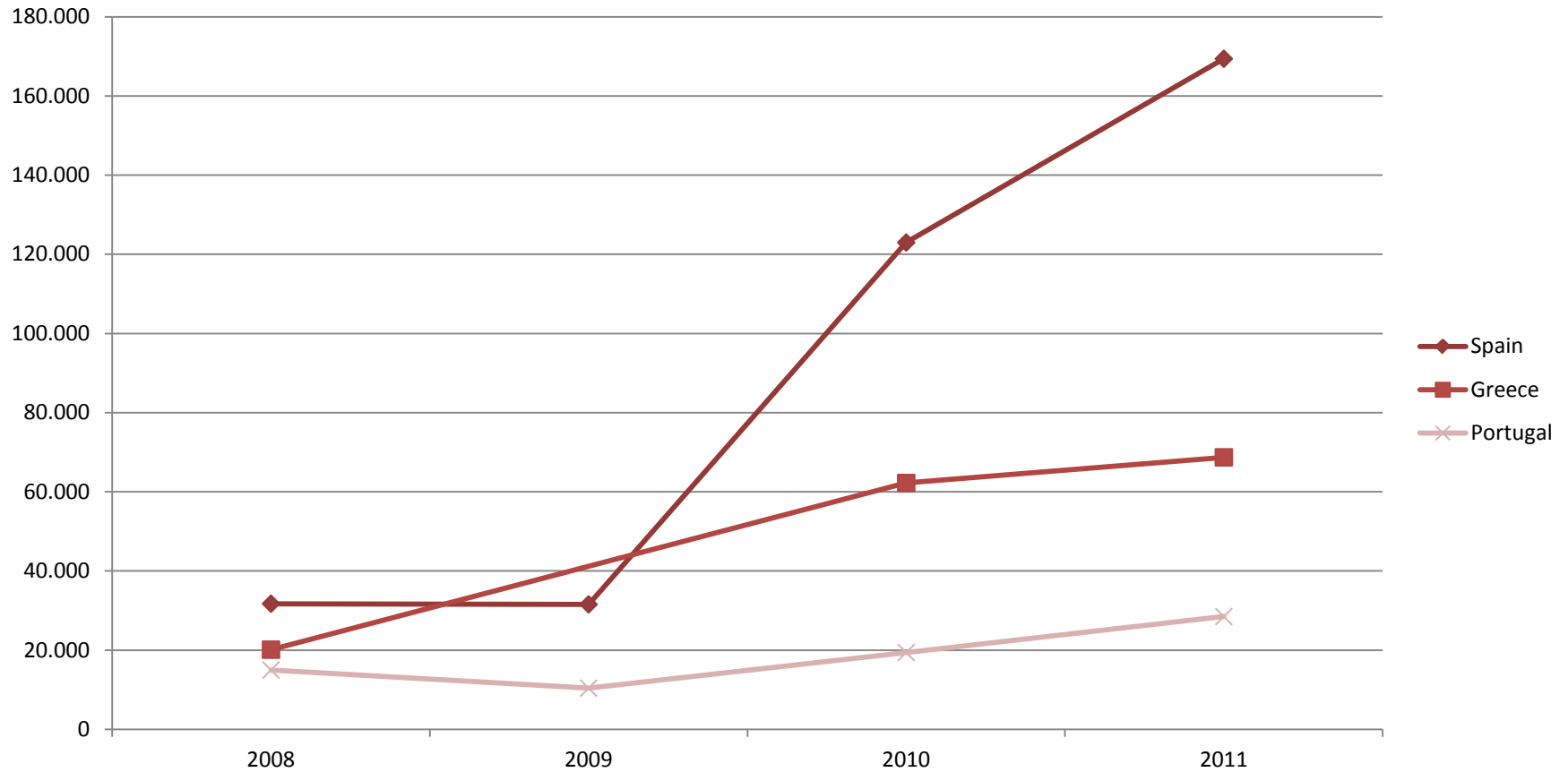
The dual impact of the crisis



Unemployment rates, selected countries.



Emigration from crisis countries (all nationalities)



Immigration to Germany, 2011-2012

Einwanderung von Ausländern nach Deutschland

Die wichtigsten Herkunftsländer 2012

Veränderung zu 2011 in Prozent — Einwanderer



Eingewanderte Ausländer seit 1992

in Tausend

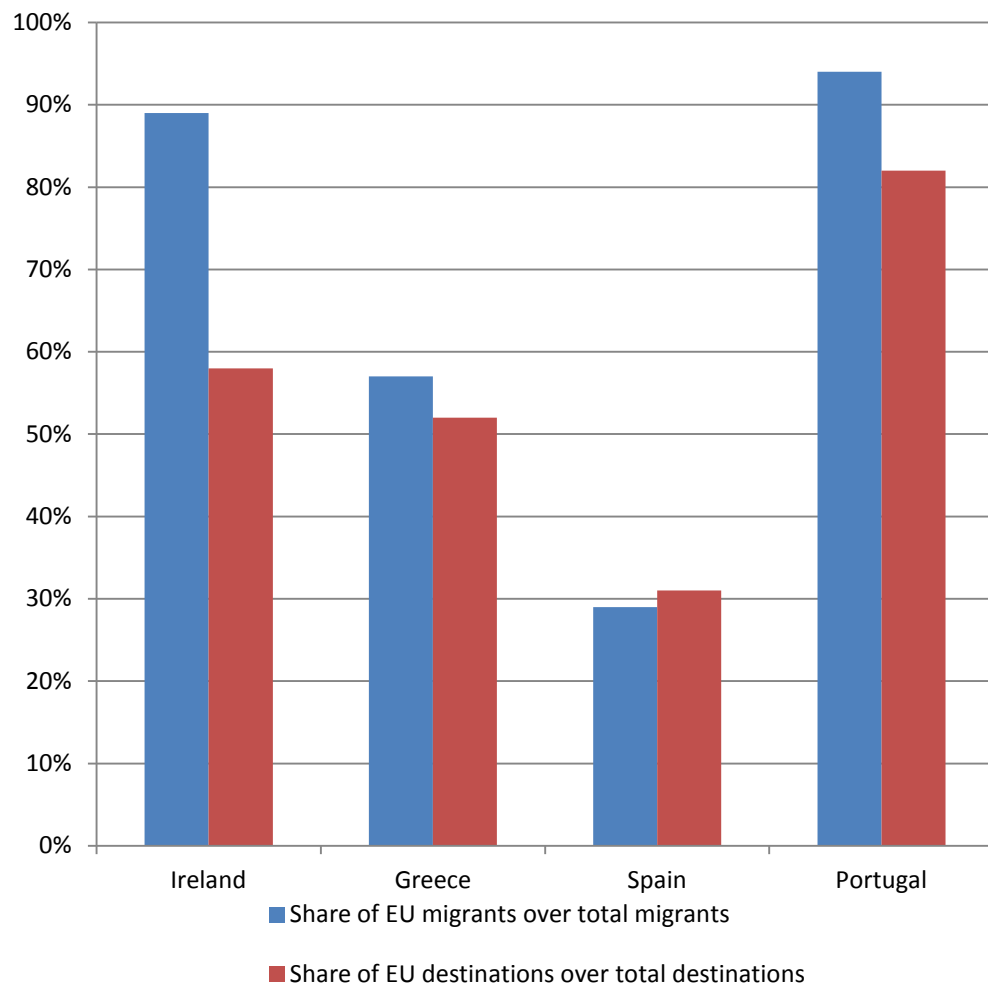


Einwanderung insgesamt: 1,081 Millionen, davon 0,966 Mio. Ausländer und 0,115 Mio. Spätaussiedler und zurückkehrende Deutsche.

Quelle: Statistisches Bundesamt

F.A.Z.-Grafik Walter

Composition and destination of migration flows from the crisis countries



- Strong correlation between the share of EU nationals and the share of EU destinations over total destinations (except in Ireland).

- In the case of Spain, a minority of outflows was composed of EU nationals, and the majority of migrants went outside Europe.

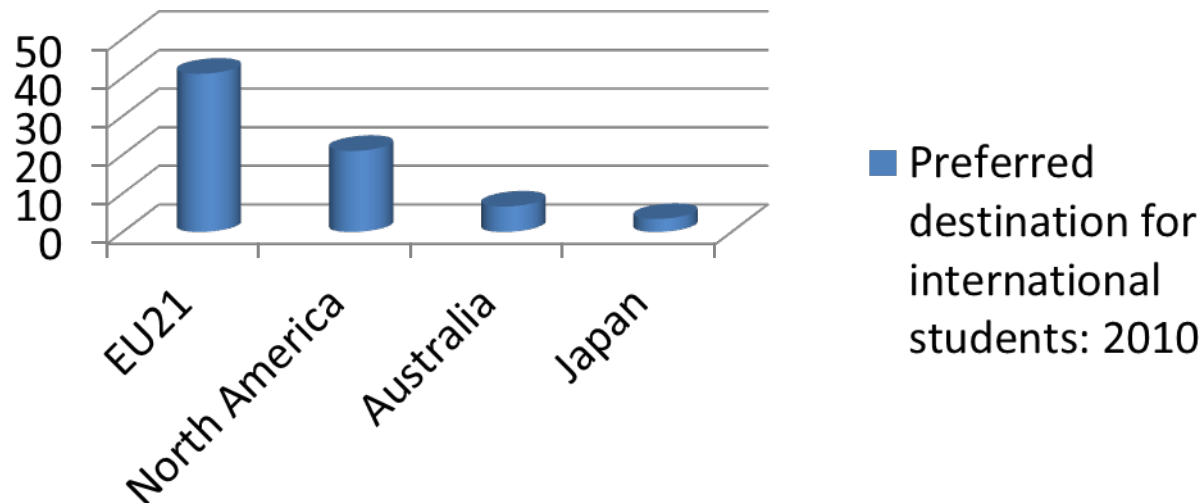
Third-country nationals: statuses allowing mobility

- 1) Long term residents:** 5 years of residence, labour market test prior to mobility. Less than 50 LTRs per MS has moved to another EU MS
- 2) High Skilled Workers:** same conditions for mobility as for entry; after 18 month period; no data available yet
- 3) Students and researchers:** some mobility during studies and research period. Commission recast proposals positive for transition to labour market.

Third-country nationals: Trends

- Third-country nationals represent 7-10% of the pool of working age foreigners in EU Member States who have moved from another EU Member State.
- EU attractive destination for students: 21% of 1st residence permits in the EU issued for education reasons.

Preferred destination for international students: 2010



Third-country nationals: Motivations

- 1. *Mobile Talent?*** Study shows although 50-80% international students are willing to stay, 75% leave after graduation
- 2. *Immigrant Citizens Survey.*** 90% of third-country nationals want to become long-term residents
- 3. *Migrants' Mobility*** project: showed a lack of knowledge of rights, barriers faced, and strong motivation for right to mobility

Costs and benefits: A multi-dimensional perspective

1. **From a macro-economic perspective:** labour mobility is a necessity for the sustainability of the Monetary Union and a key asset for the EU as a whole. High potential for *dealing with asymmetric shocks*, improving the *allocation of human capital*, and *improving labour market fluidity*.

1. **From a national/regional perspective:** significant benefits for sending and receiving countries both in the short and long term.
 - Can avoid higher unemployment and waste of human capital in crisis countries
 - Positive effects on public finances
 - Some preliminary signs of return migration
 - Role of remittances

 - Inflow of human capital contributing to increased growth rate
 - Address skills and labour shortages
 - Enhance the resiliency of welfare states through equilibrium between benefits receivers and payers

Costs and benefits: A multi-dimensional perspective

- **Any costs?** Increased amount of talks about potential costs (brain drain, social costs, burden on public finances, harmful to nationals' employment conditions)
- **From an individual perspective:** mobility remains a cherished principle: 60% of Europeans think that mobility is a good thing for Europe. Possible transitory costs (overqualification, discrimination on the labour market) but mobile workers have significantly gained from mobility.

Policy Recommendations: 4 key areas

- 1) A better implementation of existing tools**
- 2) Investment in empowering individuals to move**
- 3) A stronger role for the EU**
- 4) A better monitoring of the process**

A better implementation of existing tools

- ✓ Better and wider use of the EURES tool
- ✓ Simplification of the recognition of professional qualifications
- ✓ Further and deeper coordination of social security systems, especially of pensions and unemployment schemes

Investment in empowering the individuals to move

- ✓ Personalised career guidance for migrants to realise the full potential of mobile workers
- ✓ Creation of a one stop-shop to facilitate registration procedures
- ✓ Investment in the mobility propensity of target groups at an early stage.

A stronger role for the EU

- ✓ Fighting for equal treatment, not least by setting European standards for minimum wages and working conditions
- ✓ Making Europe more attractive for foreign talents by creating optimal conditions to retain the foreign labour force within the European labour market
- ✓ Creating a Mobility Fund, in order to help receiving countries deal with transitory costs in localised areas in case of empirical evidence
- ✓ Increasing coordination in the healthcare sector in order to prevent labour shortages in sending countries
- ✓ Making the benefits of mobility more visible so that to counter the double discourse taking place at the national level

A better monitoring of the process

- ✓ Strengthening the role of the New Economic Governance tools to ensure better coherence between the overarching goal of mobility and the implementation of policies to achieve it
- ✓ Increasing the collection of data on intra-EU mobility flows in order to better assess their impacts

Thank you for your attention!