



European Labour Authority

**EU labour mobility regulatory framework (Free
movement of workers, Posting of workers)**

1

Trainers



Agenda

1

Opening

2

Welcome and introduction of the trainer, 10:00 - 10:15

3

Train the Trainer Model, 10:15 – 10:30

4

The definition of 'posting' and 'posted worker', including 'long term posting', 10:30 – 11.15

5

Coffee break, 11:15 – 11:30

6

The hard core of host state labour conditions, 11:30 – 12:15

7

Lunch time, 12:15 – 13:15

8

Tackling the challenges - specific cases, 13:15 – 14.30

9

Coffee break, 14:30 – 14.45

10

The posting of third country nationals via EU Member States, 14:45 – 15.45

11

Discussion and closing remarks of the day, 15:45 – 16.00

2

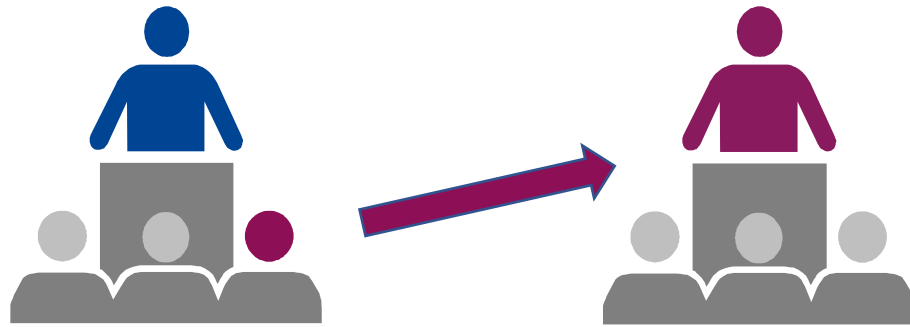
Training model

Train the Trainer Model

- ✓ The Train the trainer model is **widely used training strategy**
- ✓ Subject-matter expert is trained to **become a training instructor**
- ✓ The method offers distinct **advantages** over other training models because trainees typically **learn faster and retain the information better** than in other teaching models
- ✓ **Spillover effect** of training - it's enable the education of a larger number of participants



Train the trainer model



The **trainer**, a subject-matter expert, **trains other participants** from Member States and simultaneously **teaches them how to train others** in the secure exchange of information.

All participants will be encouraged to **conduct similar trainings** for other stakeholders (**Inspectors and Social partners**) in their respective Member States.

HOW?

- The participant will **receive material** that will use during the presentation in Member State.
- The participant will use **own remarks** from today's training.

WHAT materials?

1. **Presentation with notes** for the trainer.



The most common types of abuses

The main types of fraudulent practices within the area of posting are:

- Letterbox companies
- Bogus self-employment
- Use of temporary work agencies
- Other circumvention of labour law regulations

On this slide we can see an overview of the most common types of the fraudulent practices in posting of workers sector.

The most recognized is indeed the use of letterbox companies and then bogus self-employment as a manner to circumvent the posting and labour regulations. These, so-called shell firms that disappear as soon as regulatory authorities take too close an interest; they often simply change their names and move elsewhere. This happens many times in connection with the presence of use of temporary work agencies as letterbox companies or intermediary step in the structure. The list of know types is however not closed aggregate.

High attention is paid to presence of temporary work agencies as they are supplying cheap labour at substandard conditions.

It must be said that allowing exceptions to the country of employment principle is in itself not problematic, if the worker is indeed only temporarily employed and wishes to return to his or her country of origin, because posted workers, by definition, are located in the secondary labour market: their work contracts are signed in their home country and their social contributions as well as taxes are also paid there. Therefore, from an economic and a legal perspective, they remain rooted in their home countries.

However, due to motivating factors mentioned previously (mostly cutting the labour costs artificially), posting only for purposes of abusing of the rules or another types of circumvention of posting rules still persist.

The typical examples of circumvention of labour law rules, which often occur without need of using concrete type of fraudulent practices, are:

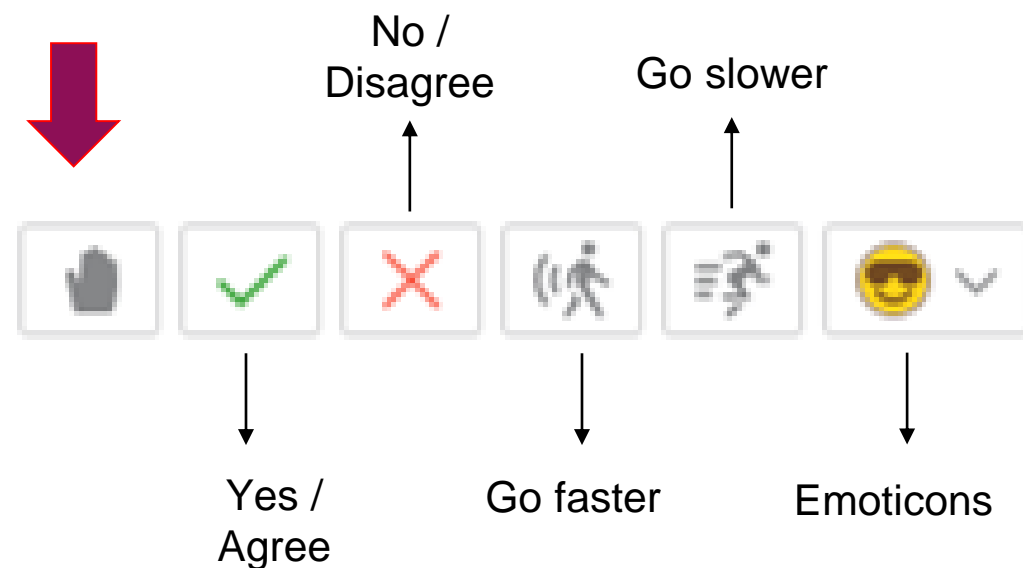
- not paying the required remuneration, failing to notify the posting to respective authorities at all, failing to pay mandatory parts of the remuneration, or allowances or contributions for social security or health insurance purposes, failing to register the employee for social security purposes or failing to request A1 certificate, missing employment documentation (e.g. no employment contract signed) or missing details in employment contract, which is the most typical undeclared work practice.

Then it could be also increase in overtime working hours, non-compliance with mandatory rest periods, poor living conditions, holiday pay and sick pay being withheld but not paid, breaching the obligation to inform the employee about the working conditions in the receiving EU country and many others.

Administration rules

In case of a **question**:

1. **Raise your hand** (virtually or physical)



2. Ask for the floor in the **chat** or **ask directly in the chat**



1. Select „All Participants“
2. Type your message
3. Click „Send“

Please **wait** for the trainer to **give you the floor** to avoid confusion.

3

The definition of
'posting' and 'posted
worker', including 'long
term posting'

15 minutes
coffee break



4

The hard core of
host state labour
conditions

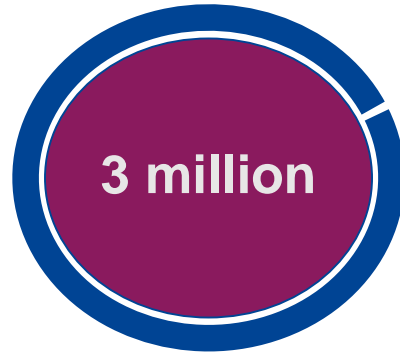
1 hour
lunch break



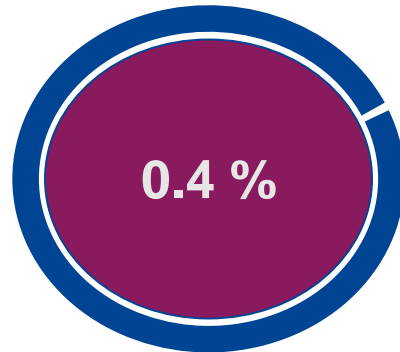
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Tackling the
challenges -
specific cases

In terms of numbers

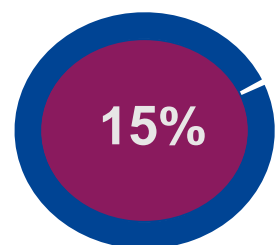


In 2019, the number of posted workers reached 3 million.

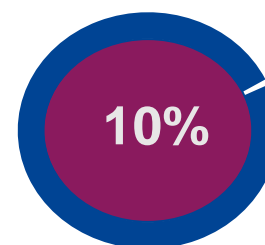


The total number of persons posted to one EU Member State made up 0.4% of the total employment and number of cross-border workers represents 0.6 % of the total EU employment.

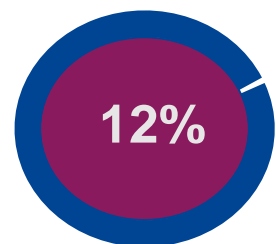
The main sectors of economic activity for EU-movers in 2019



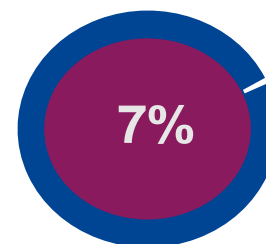
Manufacturing



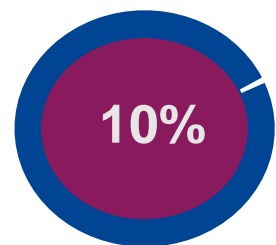
Accommodation and food
service activities



Wholesale and retail trade



Transportation and storage



Construction

Source: European Commission, Annual Report on Intra-EU Labour Mobility 2020 Written by Elena Fries-Tersch, Matthew Jones and Linus Siöland, Publications Office of the European Union, 2021

Posted workers by country

Received workers and Sent workers by Country



Source: European Commission, Posting of workers, Report on A1 Portable Documents issued in 2018 - Frederic De Wispelaere, Lynn De Smedt & Jozef Pacolet – HIVA-KU Leuven, October 2019

Legal framework



The Treaty on the Functioning of the European Union



The Posting of Workers Directive (EU Directive 96/71/EC) **set rights and rules for posted workers**



The Enforcement Directive 2014/67/EU **was adopted with the aim to strengthen the practical application of** Posting of Workers Directive



New Directive 2018/957/EU amending Directive 96/71/EC **brings revision of rules applicable for posting of workers**



Practical guidance on posting



Road transport - lex specialis (Directive (EU) 2020/1057)

'Posting' under Regulation 883/2004 & Directive 96/71

	Posting under Regulation 883/2004	Posting under Directive 96/71/EC
Legal basis	Art 48 TFEU	Art 53(1), 62 TFEU
Aim	<p>Free movement of workers</p> <p>Protection of social security rights of posted workers, overcome obstacles likely to impede free movement of workers, to avoid unnecessary and costly administrative complications.</p>	<p>Freedom to provide services</p> <p>Coordination of national rules of receiving Member State applicable to posted workers, such as maximum work periods, minimum rest periods, minimum rates of pay, health & safety, equal treatment, etc.</p>
Action	Temporary application of social security law of sending Member State (exception to lex loci laboris).	Temporary application of certain terms & conditions of employment of receiving Member State.

‘Posting’ under Regulation 883/2004 & Directive 96/71

	Posting under Regulation 883/2004	Posting under Directive 96/71/EC
Personal scope	Employed & self-employed	Workers (employment contract)
Maximum period	24 months + possible derogation	No maximum period, but additional terms & conditions after 12+6 months under the new Directive 2018/957
Attestation required	Portable Document A1	N/A
Notification in sending MS	Yes, whenever possible in advance.	N/A
Notification in receiving MS	No legal requirement in EU law, depends on Member State e.g. Belgium Limosa.	Declaration prior to posting required by many Member States

Reasons for posting of workers



Market competition



Skilled workers

Reasons for abusing of posting rules



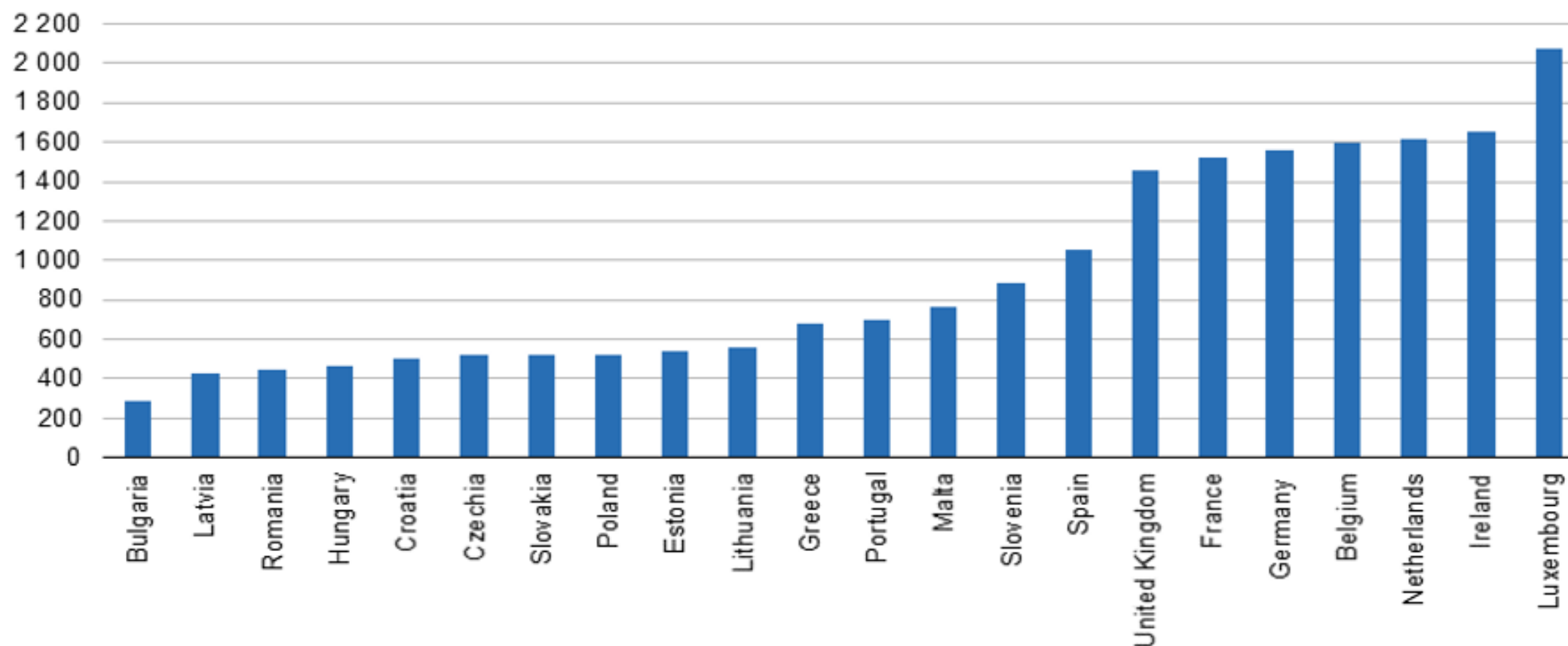
Labour cost differentials



Difficulties in enforcement

Differences in minimum wages in MS

Minimum wages in the EU Member States, as of January 2019, in € per month



Denmark, Italy, Cyprus, Austria, Finland and Sweden do not have minimum wages

Source: Eurostat

Differences in social security contributions

	Country	Social contributions paid by employer	Social contributions paid by Employee	Total
Receiving MS	Belgium	34.67%	13.07%	47.74%
	Netherlands	18.47%	27.65%	46.12%
Sending MS	Poland	20.61%	13.71%	34.32%
	Cyprus	7.80%	7.80%	15.60%
	Portugal	23.75%	11%	34.75%
	Romania	23.45%	16.50%	39.95%
	Slovakia	35.20%	13.40%	48.60%
	Slovenia	16.10%	22.10%	38.20%
	Hungary	23.50%	18.50%	42.00%

Source: KPMG, Employer social security tax rates and Employee social security tax rates, 2018

Consequences of fraudulent practices



Impact on business competition

Employers using fraudulent practices can benefit from reduced social security contributions or from lower labour cost (social dumping, strategic posting, etc.)



Impact on working conditions and worker's rights

Mostly in aspects like working time, pays, social security & pensions, accommodation conditions and OSH



Impact on public finance

Mainly losses caused to social security & pension systems and losses on state budgets/ tax evasion

The most common types of abuses

The main types of fraudulent practices within the area of posting are:



1

Letterbox companies

2

Bogus self-employment

3

Use of temporary work agencies

4

Other circumvention of labour law regulations

Pool question

Have you experienced any other type of fraudulent structure different from use of letterbox company, bogus self-employment or fraudulent use of temporary agency?

A. YES

A. NO

Letterbox company

In most of the EU Member States there is no legal or working definition of letterbox companies.

Definition... better said DEFINITIONS!



Letter box companies' are companies which have been set up with the purpose of benefiting from legislative loopholes while not themselves providing any service to clients, but rather provide a front for services provided by their owners. Such companies are normally very small and often only operate a letter box, hence the name.

Non-genuine posting

Main elements to be considered:

- ✓ Registered office
- ✓ Recruitment place
- ✓ Contractual situation
- ✓ Place of substantial business activities
- ✓ Place where the employees are employed
- ✓ Number of contracts with clients
- ✓ Turnover
- ✓ Other

Sector specific – agricultural (seasonal workers), transport, food industry, construction.

The **work of posted workers** is supervised, managed and planned from host country even though it is claimed that this is done from home country (through letterbox company).

The **recruitment** often takes place in host country or is organized from host country.

The **employment contracts** and documentation falls under laws of the home country even though the workers never appeared there.

Letterbox companies – known structures



Contractor - Subcontracting model



Service model



Subsidiaries in low cost EU regions



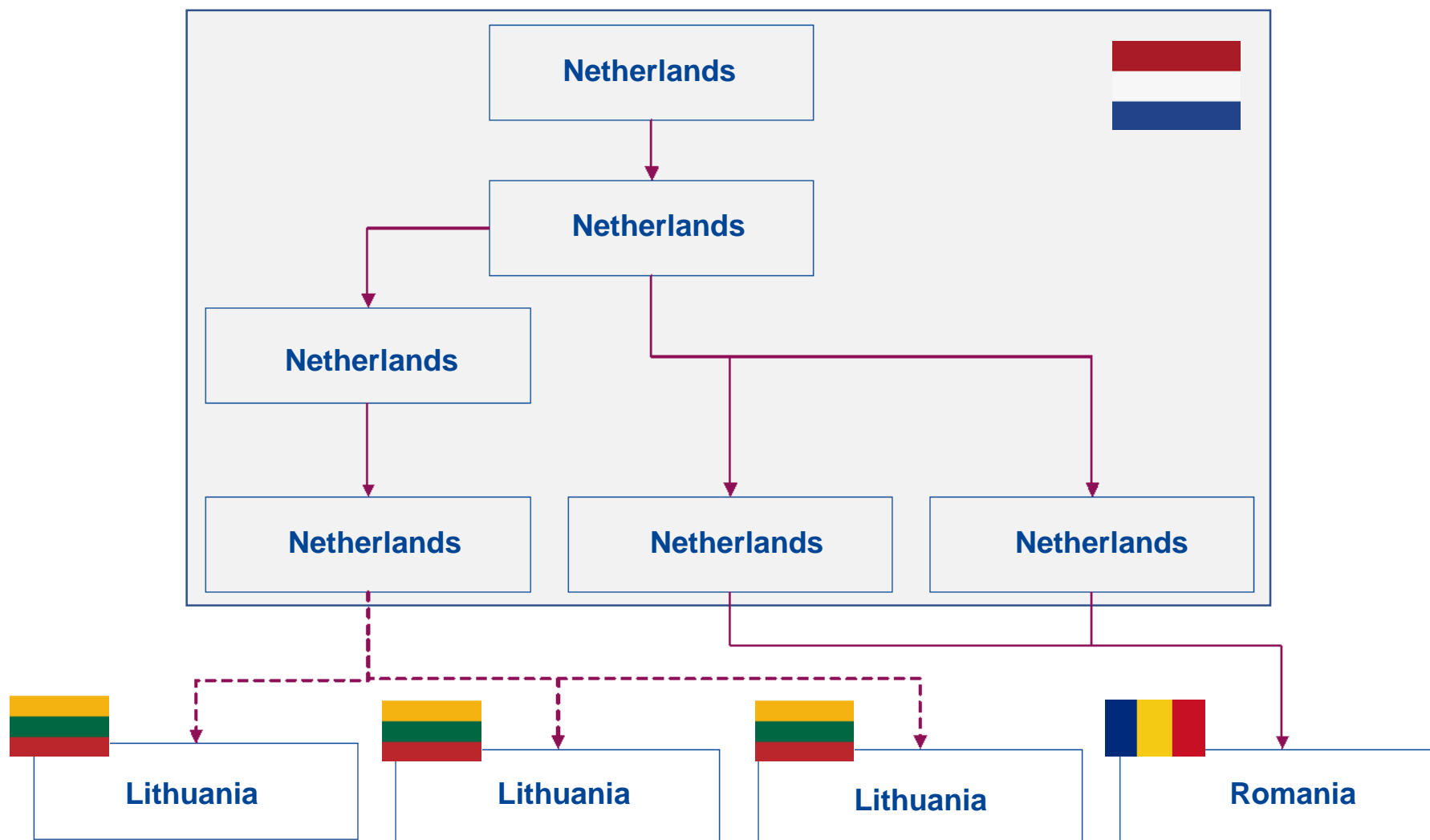
Use of temporary work agencies



Combination of all above specified

Subcontracting model Dutch transport sector

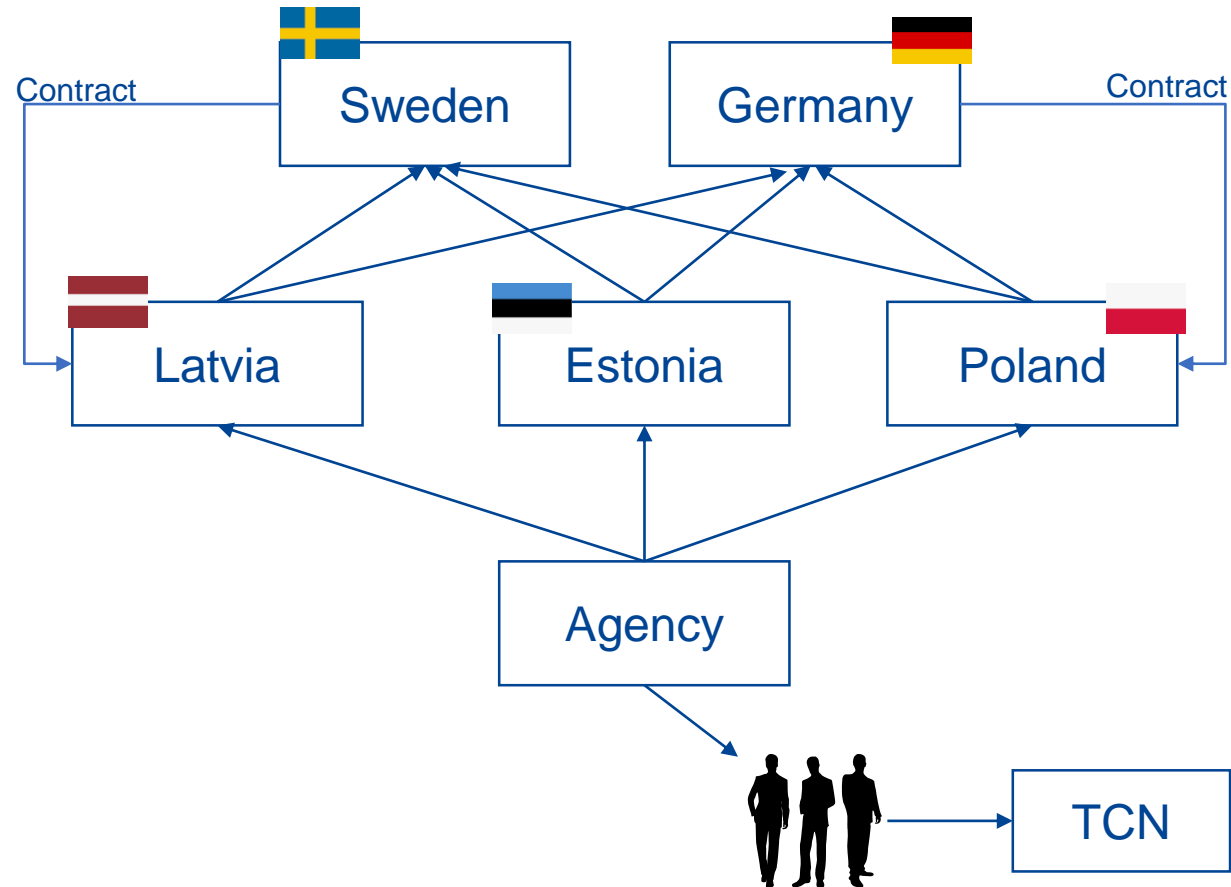
Example



Subcontracting model

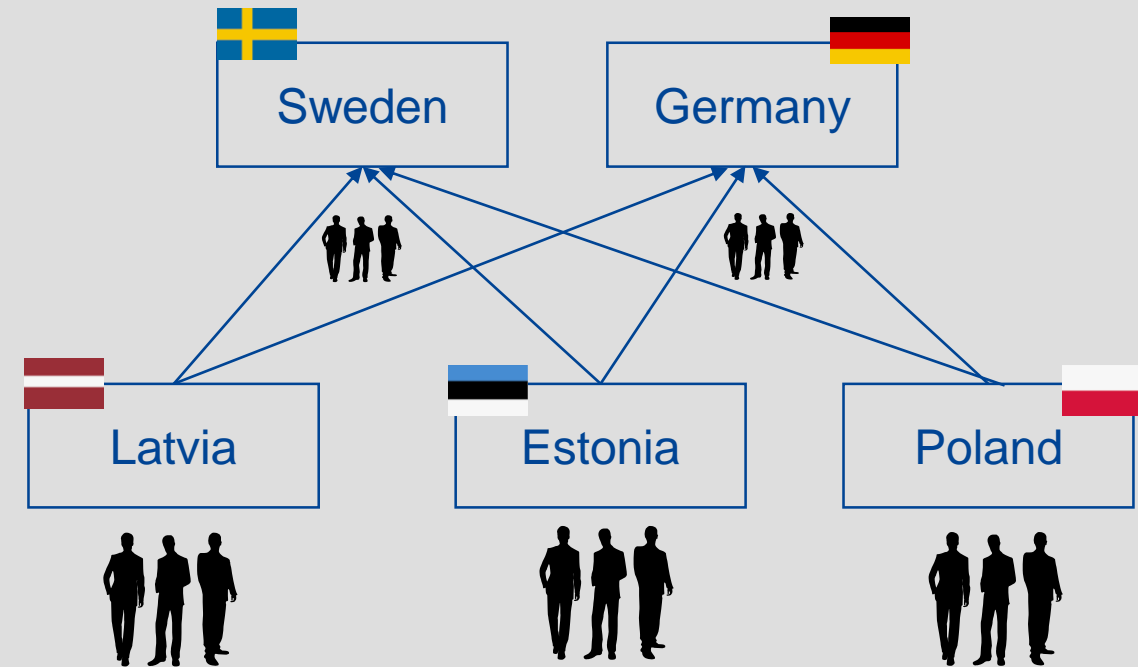
Trucking sector

Declared status



Example

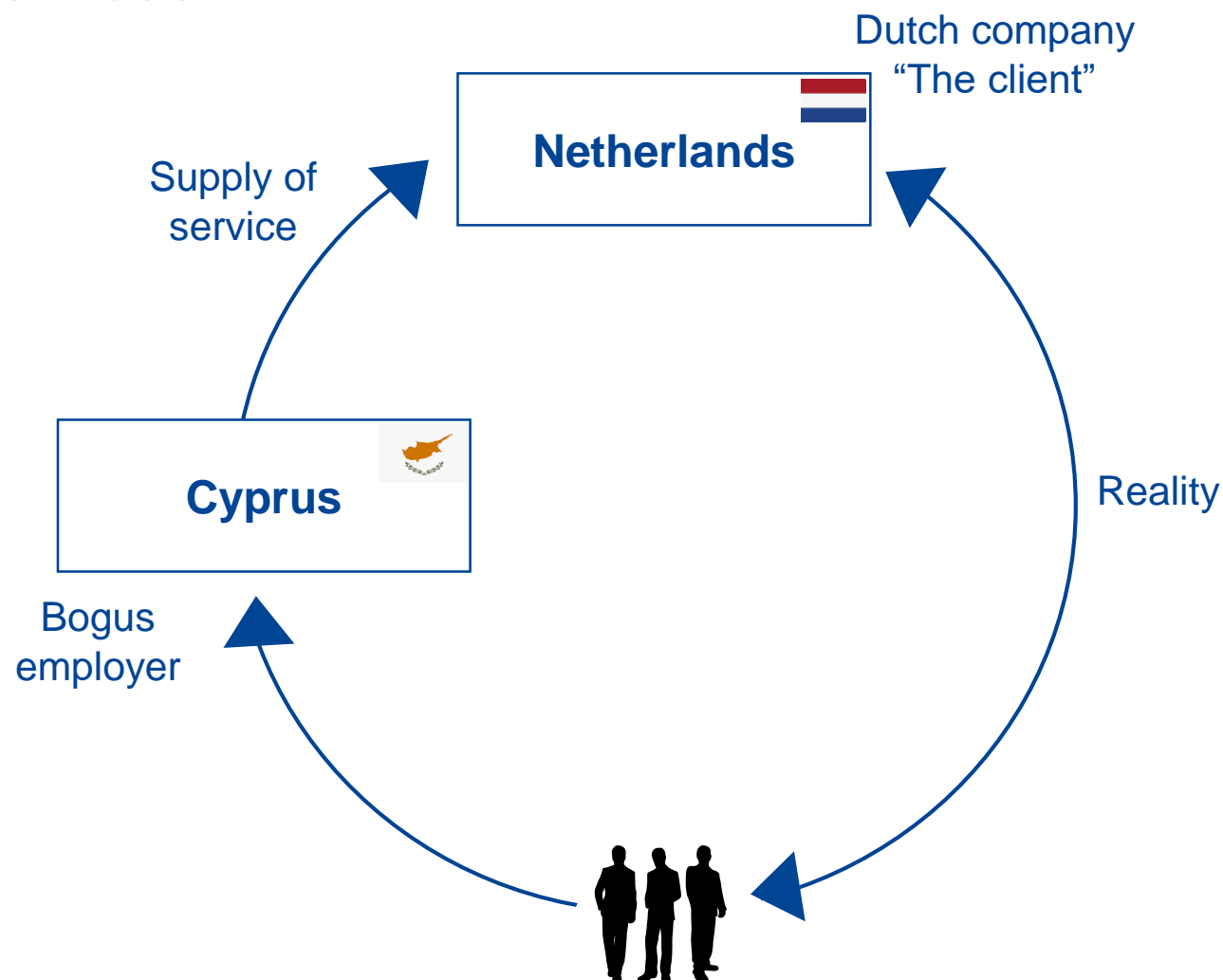
Before



Island route model

Cypriot route model #1

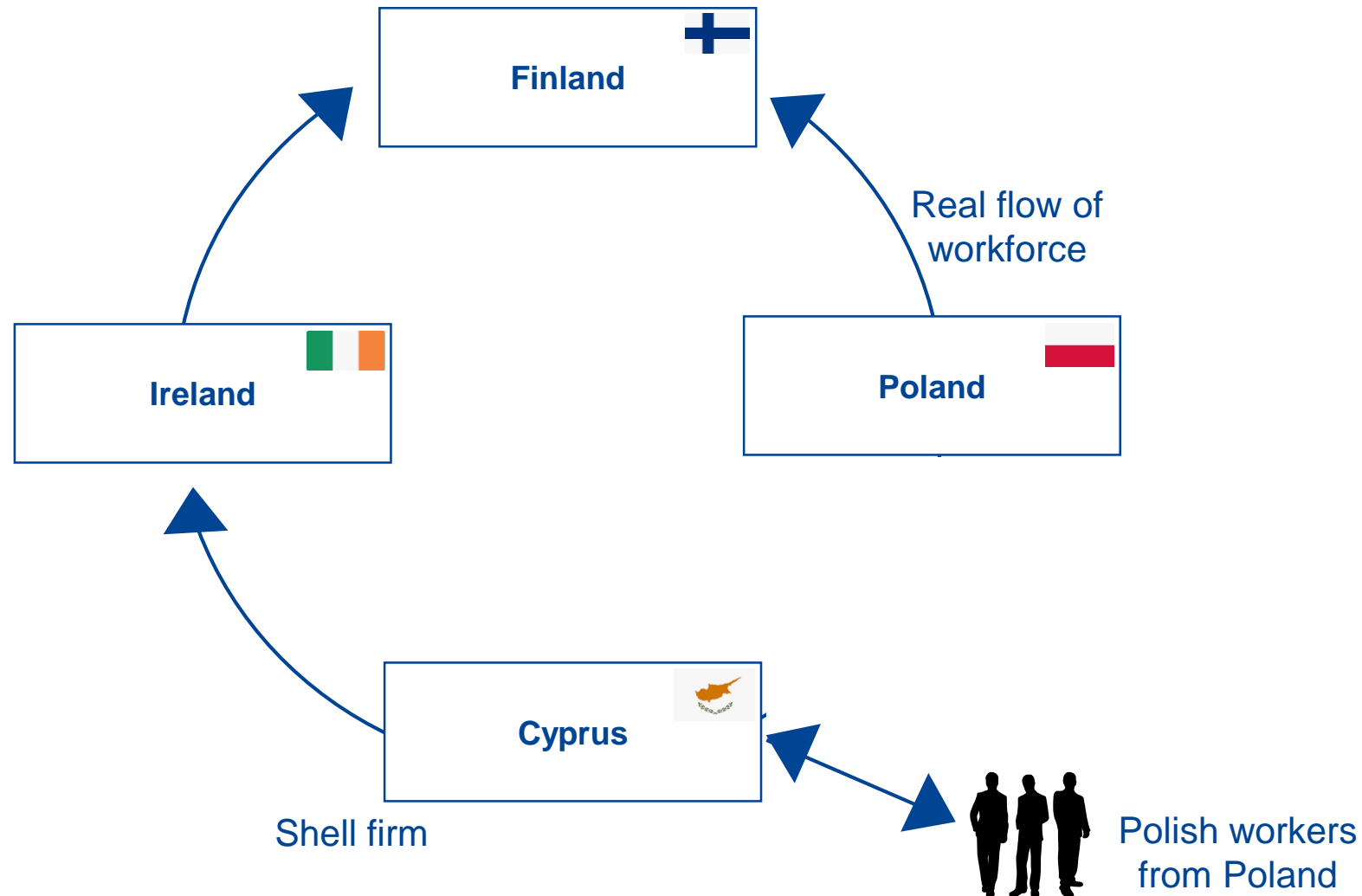
Example



Island route model

Cypriot route model #2

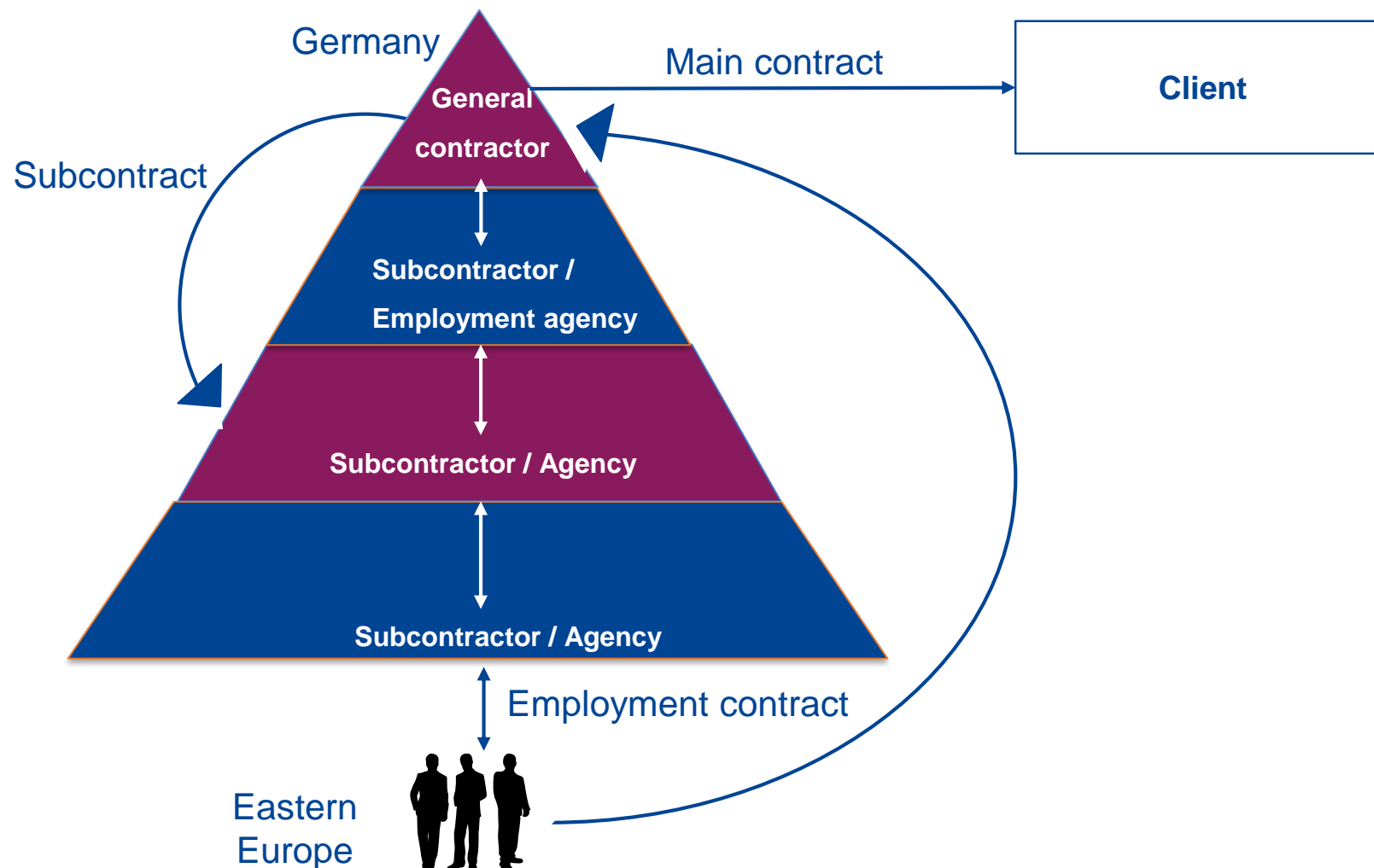
Example



Web of subsidiaries / Pyramid structure

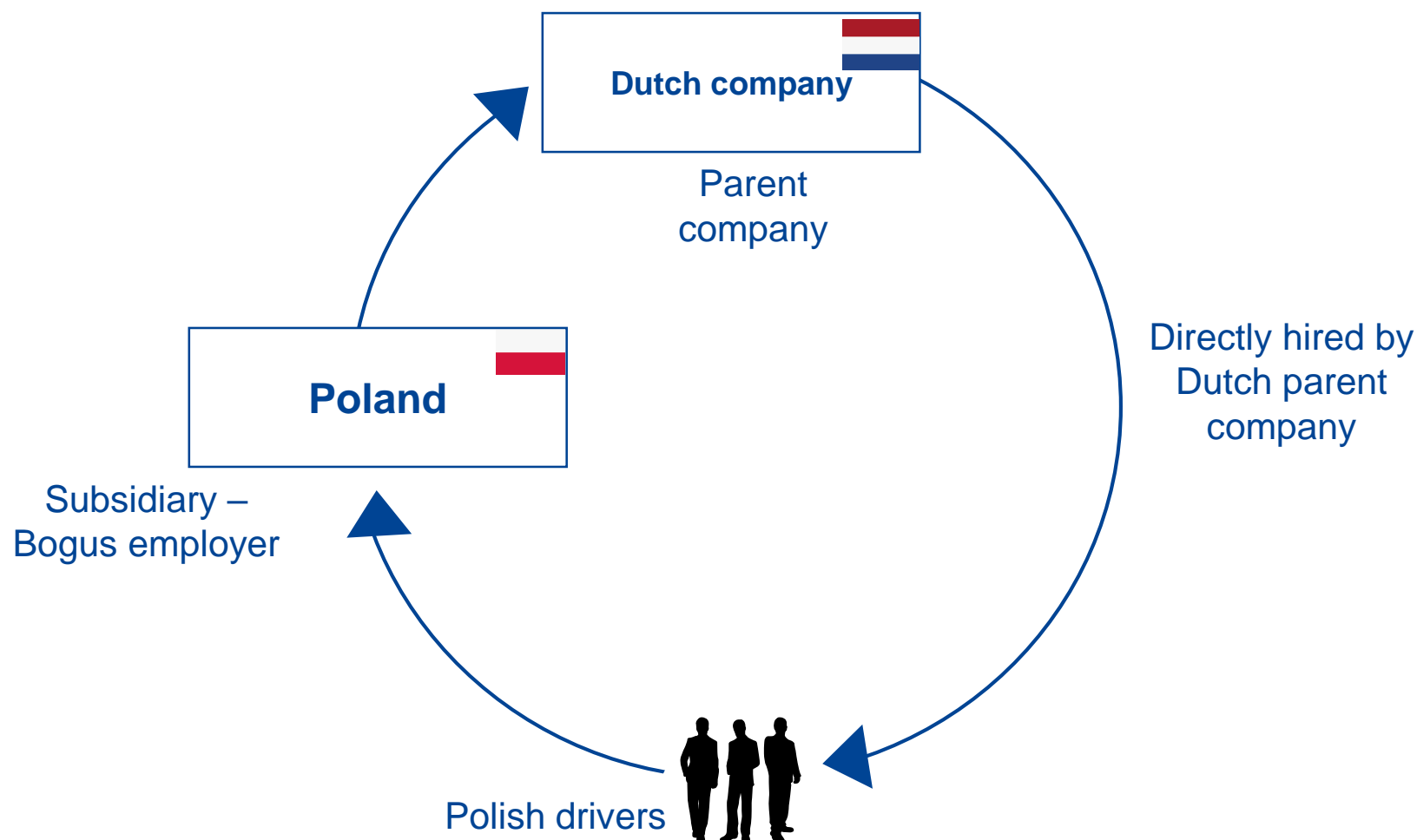
Meat industry

Example



Subsidiary in Eastern Europe

Example



Undeclared vs Under-declared work

What is the difference?

UNDECLARED

- Employee without an employment contract
- Employee not registered for social security purposes/ missing A1
- TCN without work permit/ residence permit for work purposes
- Employee not registered for tax, etc.

UNDER-DECLARED

- DECLARED, but...
- Intentional absence of evidence of overtime work (illegal overtimes)
- Unexpected deductions from the paycheck
- False claiming of shorter working periods/ zero contracts
- Claiming for damages

Bogus self-employment

Bogus self-employment is an employment relationship where a worker is formally registered as self-employed but works under the same working conditions as those of direct employees and/or they depend on a single employer for a main part of their income.

Who is self-employed? Legal definition of self-employment status	Who is bogus self-employed? Legal definition of employment status
Independent	Dependent (economically / personally)
Acting in his/her own name	Acting of behalf of the employer
Getting client requests	Getting work orders
Multiple clients	Single client/ employer
Different monthly earnings/ turnover	Usually the same earning each month
Using own tools/ equipment	Using employer's tools/ equipment

Posted self-employed persons

Number of PDs A1 according to Article 12 of the Basic Regulation issued to employed and self-employed persons, 2018

	Issued			
	Employed		Self-employed	
	Number	% row	Number	% row
LI	8	25%	24	75%
SK	53,701	57.5%	39,615	42.5%
IS	88	58.3%	63	41.7%
CZ	7,853	76.6%	2,402	23.4%
PL	220,906	92.6%	17,619	7.4%
IT	135,743	91.2%	13,120	8.8%
RO	41,947	100.0%	3	0.0%

Source: European Commission, Posting of workers, Report on A1 Portable Documents issued in 2018 Frederic De Wispelaere, Lynn De Smedt & Jozef Pacolet – HIVA-KU Leuven, October 2019

Pool question

Have you experienced a significant portion of self-employed person postings from your (sending) country, e. g. more than 30% of all posting cases?

A. YES

A. NO

Forms of self-employment

Legal forms:

- ✓ Sole entrepreneurs
- ✓ Freelancers
- ✓ Single shareholder companies
- ✓ Craftsmen

Sectors:

- ✓ Logistics/ transportation
- ✓ Construction
- ✓ Online platform economy (shared accommodation, taxi, food delivery, etc.)
- ✓ IT and services providers
- ✓ Food industry
- ✓ Consulting professions

Pool question

Are professional sportsmen considered as employees in your country?

A. YES

A. NO

Who is posted worker?



An **employee** who is sent by his/her employer to carry out a service in another EU Member State **on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary employment undertaking or placement agency.**

The main criteria for definition of “worker” are genuine and effective performance of work, subordination and remuneration of the worker.



All other situations **are not** considered as posting, e. g.:

- Employee moving to another EU Member State on his/ her own – EU mobile workers;
- Employee not carrying out services in another EU Member State;
- Employee permanently moving to another EU Member State;
- Directors of companies, entrepreneurs, self-employed persons not being employees.

Challenges related to bogus self-employment

1 Mostly grey area

2 Workers' rights vs non-standard forms of work

3 Intensity of bogus self-employment and online platform work

4 Legislation is playing 'catch-up' with fast-moving trends

5 Complicated process of cross-border verification of legal status of the employment relation

6 Undeclared work is in general growing

7 Attractive also for the self-employed, same as for the „client“

Tackling the challenges – bogus self-employment

Initiatives present in different EU MS:

More used

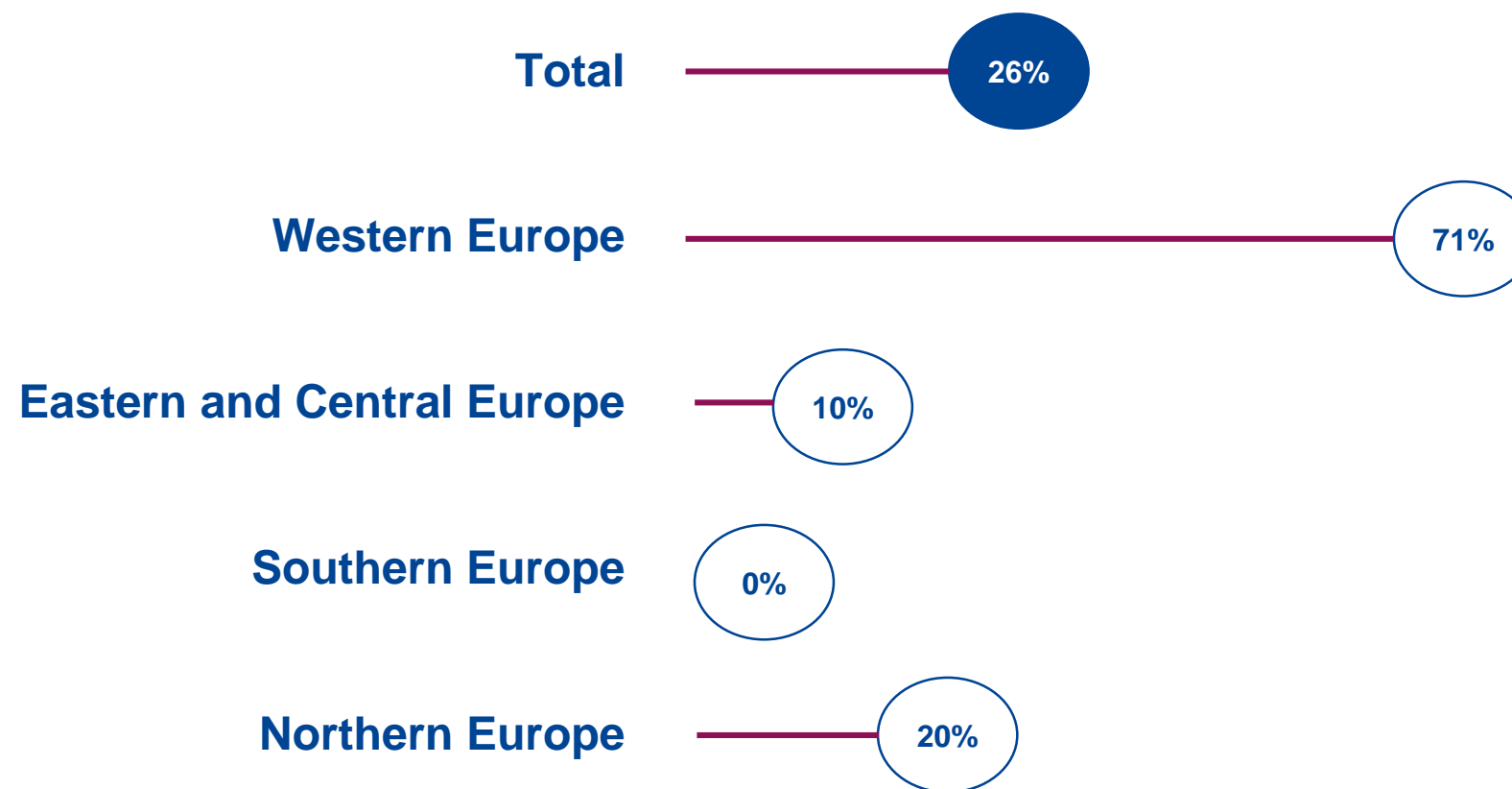
State authorities provide advice and guidance to service providers on the tax, social security and/or labour law obligations, information websites, etc.

Less used

Awareness campaign, Information hotlines, Preventive initiatives, etc.

Tackling the challenges – CJIs

Portion of cross-border inspections focusing on bogus self-employment:



Source: 2019 Annual Platform Survey, based on 27 responses. Answers to the question: Are cross-border inspections carried out in relation to bogus self-employment?

Employment agencies

Temporary work agency

Defined in Directive 2008/104/EC

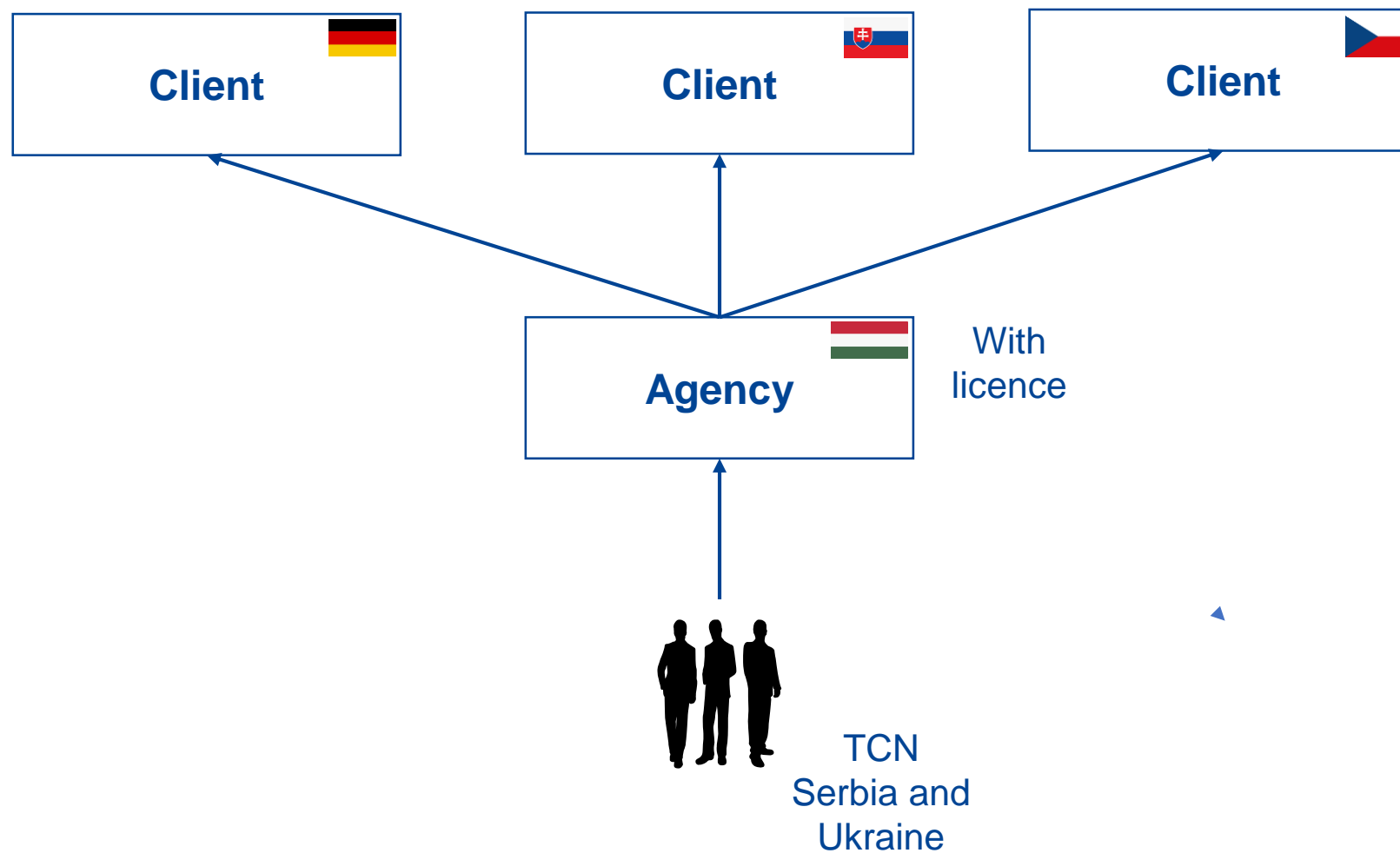


‘Temporary-work agency’ means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction

- National laws provide for the further conditions – e.g. need of special licence, regulatory requirements, reporting obligations, etc.
- NEW Directive 2018/957/EU – sets more specific rules
- The principle of equal treatment (Directive 2008/104/EC)
- Working conditions - legal fiction of agency workers being employed by the user employer

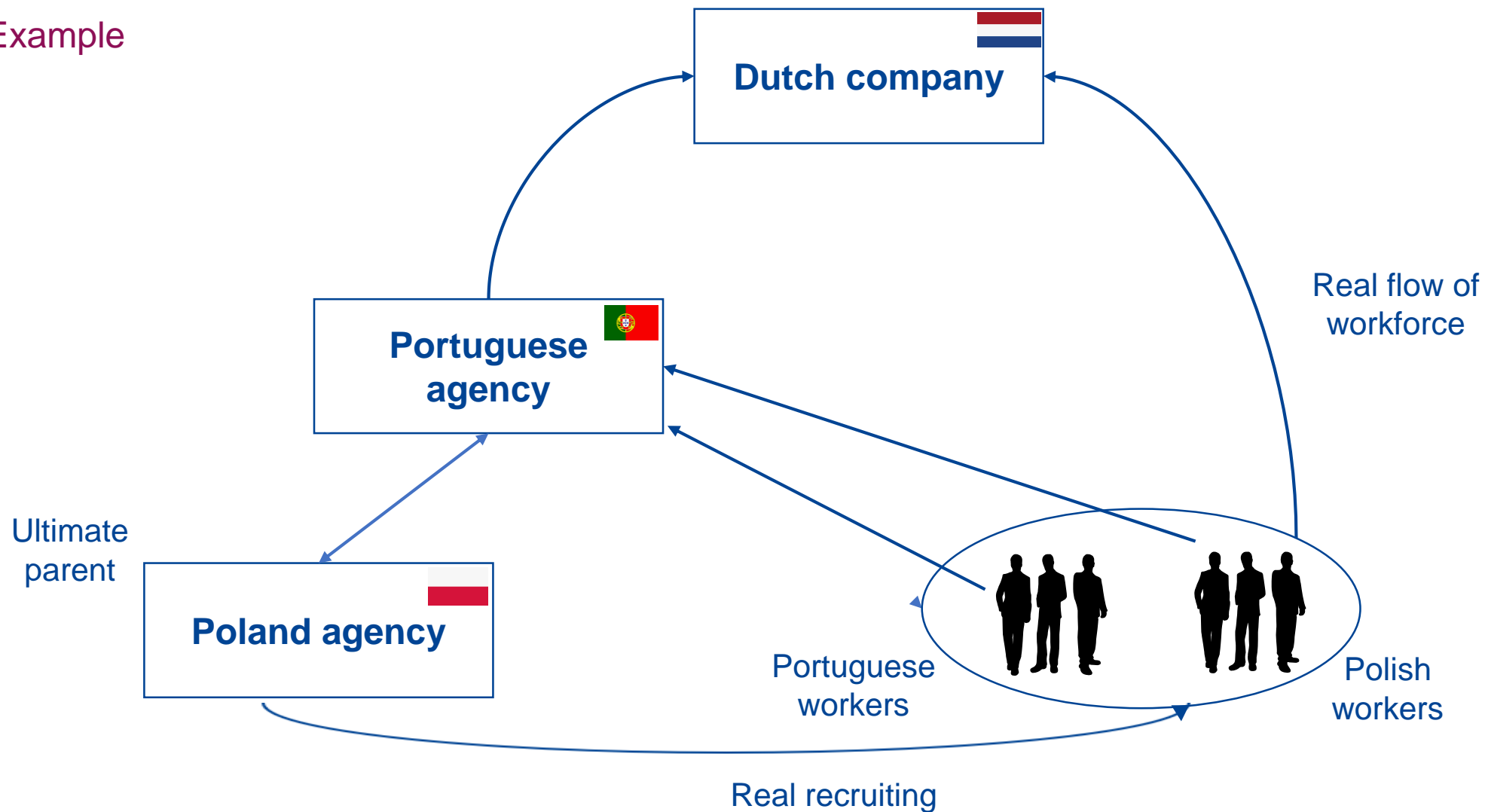
“Pure” agency model

Example



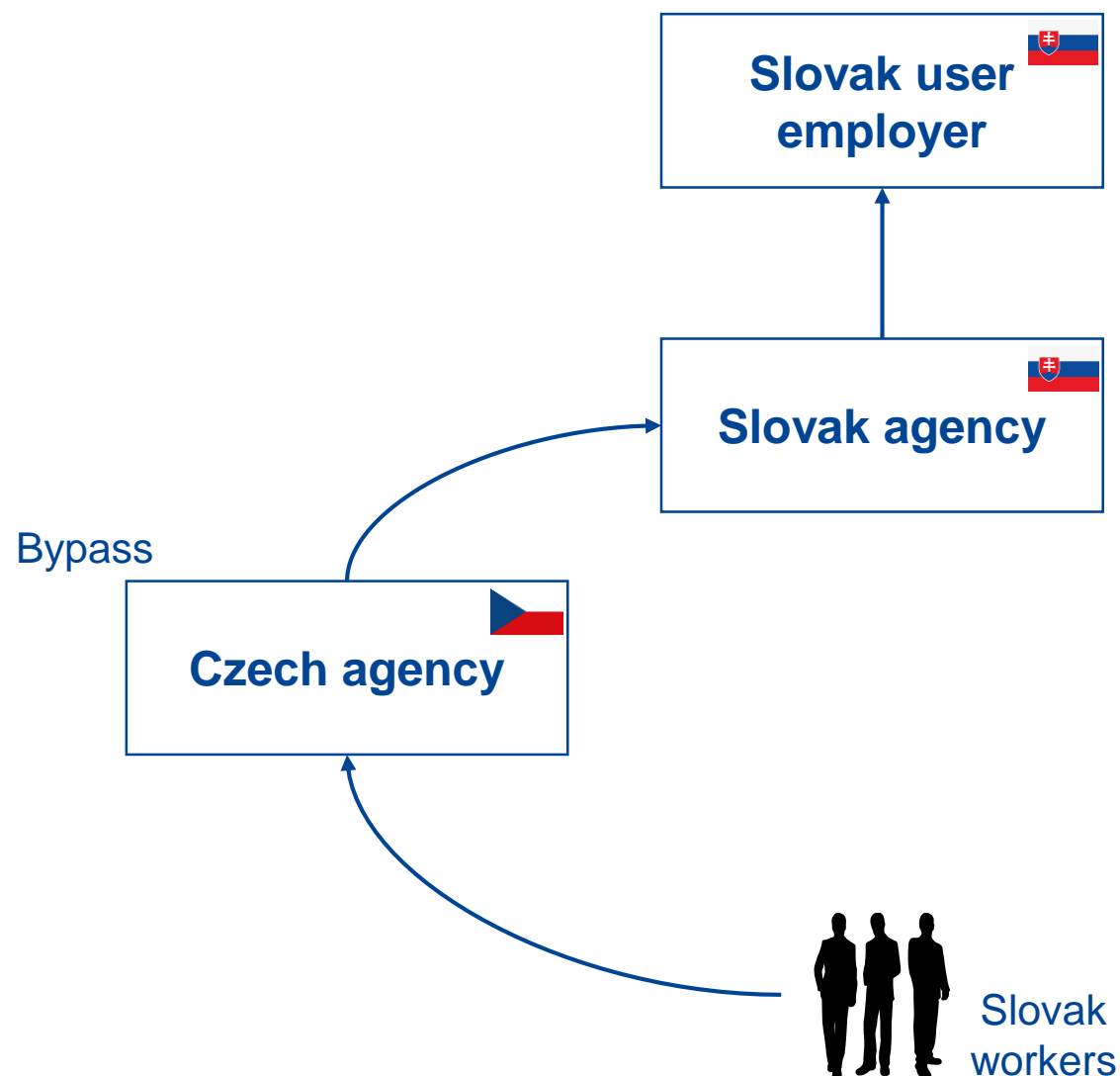
Portuguese agency model

Example



Agency – Bypassing model

Example



Tackling the fraudulent practices



ELA's support



Concerted and joint inspections

The role of CJI in enforcing Union law in the area of labour mobility

The **need for CJIs is increasing**, especially in areas such as:

- Cross-border **labour mobility issues are increasing** across the EU
- An effective **cross-border inspection** can **address those issues**
- Cross-border inspections are **still not common**
- Enforcement bodies have abroad **limited authority and capacity to tackle labour mobility issues**
- Complexity of labour mobility abuse demands **better risk assessment and coordination** of inspections **across** more countries and the **EU** as a whole.



Definition and inspection needs

Concerted inspections

Inspections carried out **simultaneously in two or more MS** regarding related cases

Joint inspections

Inspections carried out in **one MS** with the participation of the national authorities of one or more other MS



At one location in
one MS



At multiple locations
in one MS



At one or multiple locations
in two or more MS

The main actors for the CJIs supported by ELA



ELA

can suggest
concerted and joint
inspection



MS

can request
concerted and joint
inspection



SPO

can bring case to
the attention of the
ELA

What else can be done?

01

Awareness
campaigns

02

Sharing more
data with other
stakeholders?

03

Another
legislation
changes?
(e.g. social
security
regimes)

04

Other?

15 minutes
coffee break



6

The posting of
third country
nationals via EU
Member States

7

Discussion and
closing remarks of
the day