

‘The notions of mobile workers’

Pontignano XXXVI Seminar | Group 1

Notions of mobile workers

Topics

1.
Context of the
phenomenon

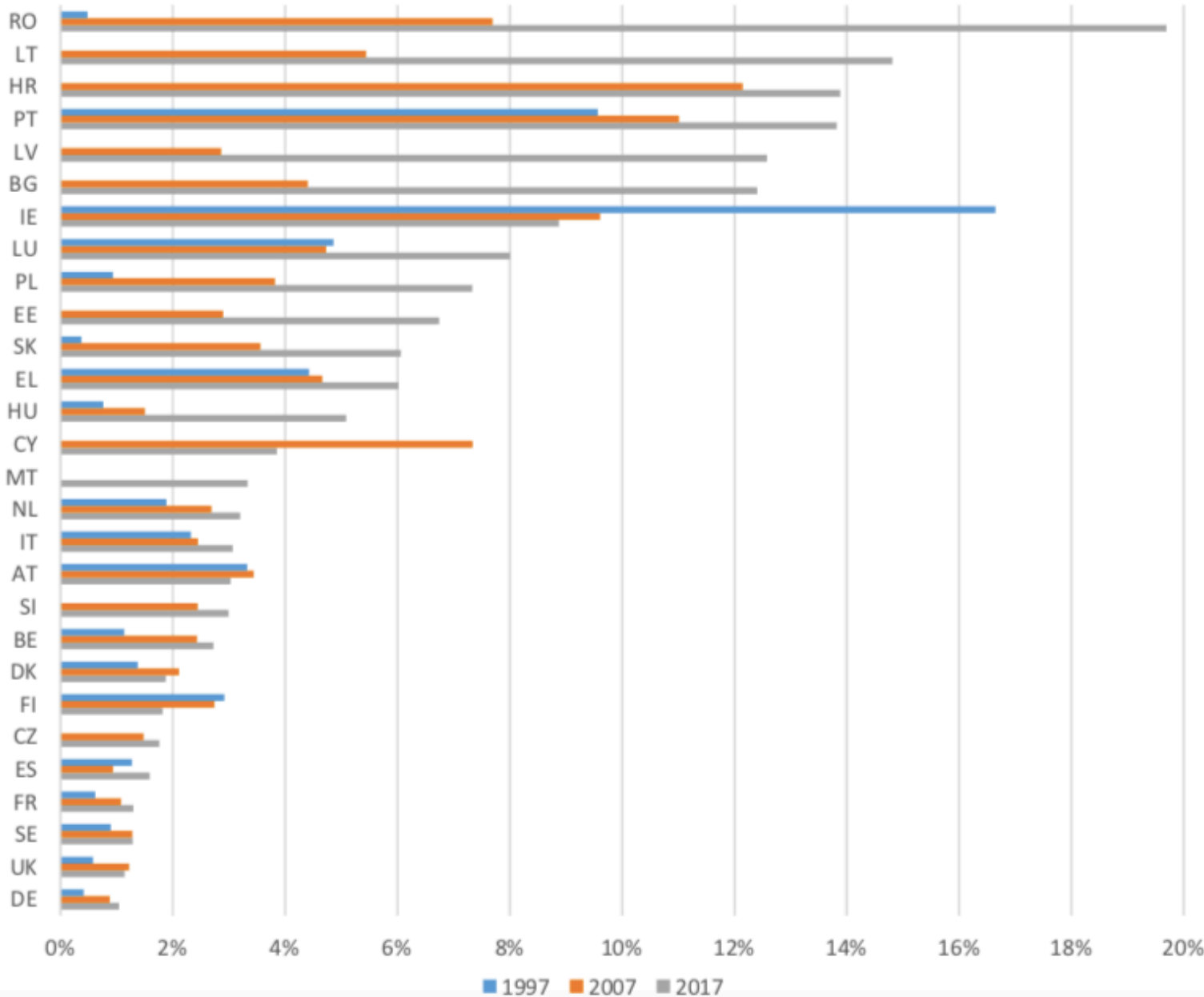
2.
Scope of the
research

3.
Categories of
mobility

Mobile citizens relative to population in origin country, selected years: 1997-2007-2017, working age population (20-64)

Source:
Centre for European Policy Studies
2019

1. Context of the phenomenon



What workers?

Different concepts

European level

- Free movement ; ECJ in Lawrie-Blum: work ; remuneration; link of subordination
- Extension through case law to other fields
- Some social protection Directives: back to national definitions
- Safeguards by the Court (ex; Betriebsrat der Ruhrlandklinik case)

National level

- Great variety;
- Intermediary category between employed and self-employed workers
- Work; Remuneration; Link of subordination (ex: Belgium)(>< Austria ,Germany)

In this research: subordinate workers (no self-employed workers)

2.

Scope of this research on 'mobile workers'



Mobility

Types of mobility:

- Geographical
- Professional mobility
 - France
 - Italy

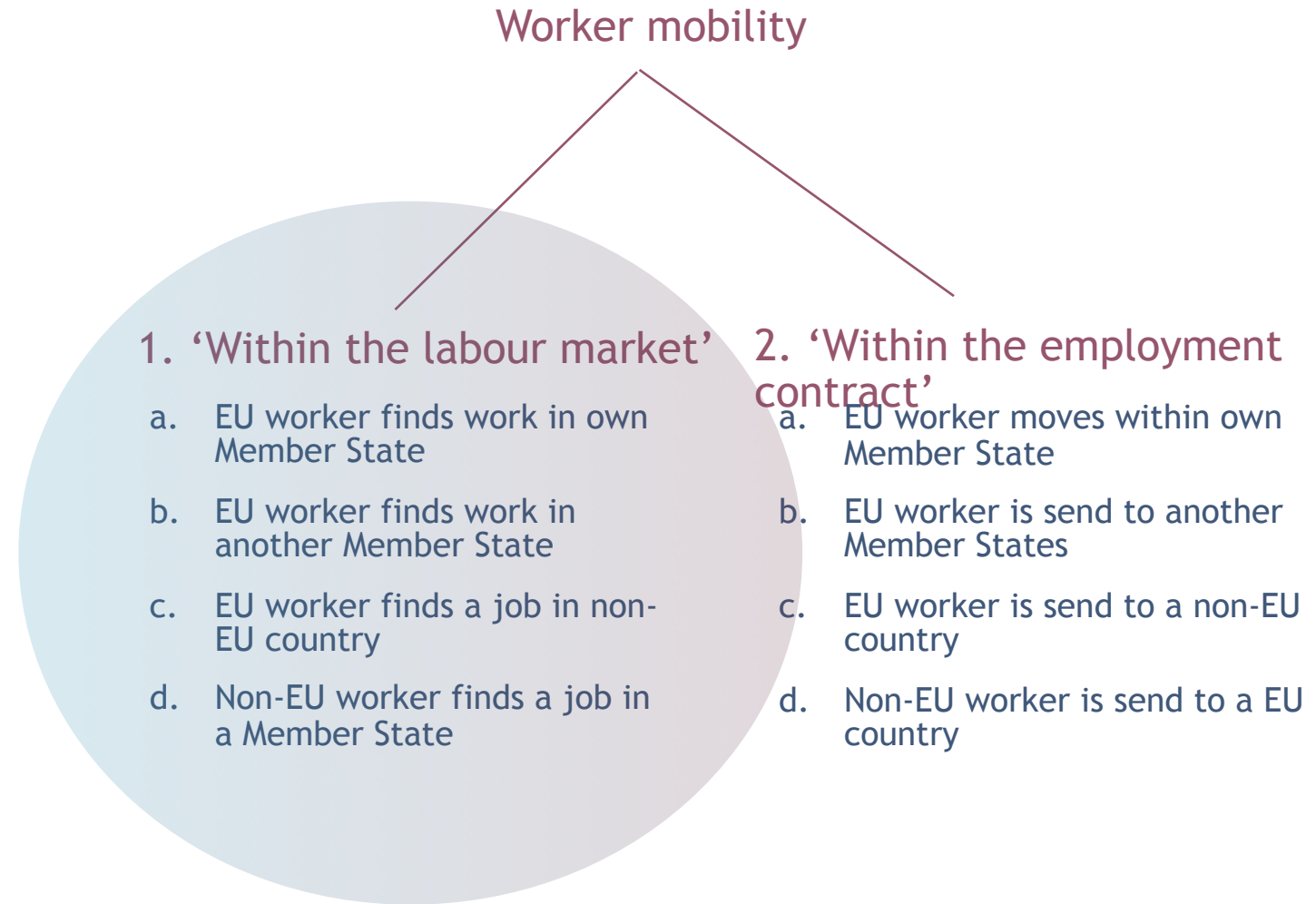
In this research: only geographical will be taken into account

2.

Scope of this research on 'mobile workers'

3.

Categories of mobility



3. Topical issues: highly mobile workers and expats

1. 'Within the labour market'

(a) EU worker finds work in own Member State

- National (local) restrictions? Some examples:
 - Italy
 - Bolzano case: language knowledge + residency
 - Spain
 - Catalunya, Valencia, Balearic Islands, Basque country: language
 - Belgium
 - Wallonia, Brussels and Flanders

1. 'Within the labour market'

(b) EU worker starts to work in another Member State

- Freedom of workers
- Social security coordination
- Restrictions for incoming workers
 - Public order exception (example: France hospitals)
 - Practical: linguistic requirement for the contract (Belgium)
- Restrictions for outgoing workers
 - Can a MS prevent national workers to work elsewhere?
 - Incentives for loyalties (example: Austria)

1. 'Within the labour market'

(c) EU worker switches job to work outside of the EU

- Possible: restrictions of the third country
- Bilateral association agreements

1. 'Within the labour market'

(d) Third (non-EU) worker wants to work inside the EU

■ National immigration laws:

No harmonisation in the EU - some particularities

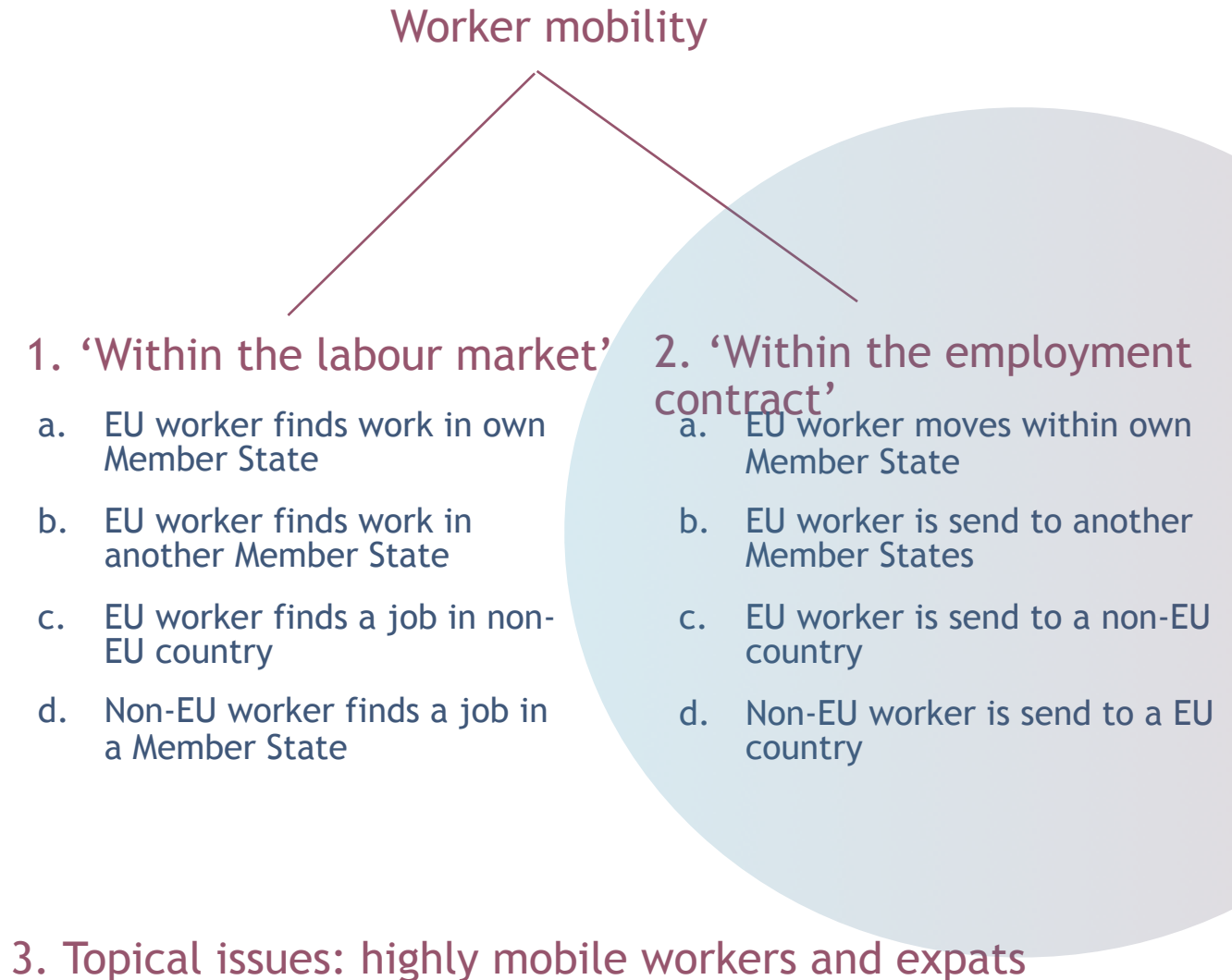
- Restricted systems
 - Quota's (Italy)
 - Only if no priority enjoying workers; national and EU (the Netherlands, Germany and Austria)
 - Difficult coverage employment list (Spain, Austria and France)
 - Exceptions for highly skilled workers or talented workers (example: the Netherlands, Austria and France)
- Illustration: Point System in Austria

■ Bilateral association agreements

Eligibility criteria for very highly qualified persons	Points
Special qualifications and skills	Maximum allowable points: 40
Graduation from an institution of higher education, minimum duration of programme: four years	20
- in the subjects mathematics, informatics, natural sciences or technology (MINT subjects)	30
- Post-doctoral qualification (habilitation) or PhD	40
Gross salary of previous year earned in a senior management position with a company listed on the stock exchange or a company for which the Austrian foreign trade office in charge issued a positive report about its activities or business segment:	
- €50,000 to 60,000	20
- €60,000 to 70,000	25
- More than €70,000	30
Research and innovation activities (Patent applications, publications)	20
Awards (recognised prizes)	20
Work experience (adequately reflecting applicant's qualification or senior management position)	Maximum allowable points: 20
Work experience (per year)	2
Six months of work experience in Austria	10
Language skills	Maximum allowable points: 10
German or English language skills for the elementary use of the language on a basic level – (A1 level)	5
German or English language skills for the intensified elementary use of the language – (A2 level)	10
Age	Maximum allowable points: 20
Up to 35 years of age	20
Up to 40 years of age	15
up to 45 years of age	10
Studies in Austria	Maximum allowable points: 10
Second part of diploma programme (Diplomstudium) or half of the required total ECTS points	5
Completed diploma programme (Diplomstudium) or Bachelor's and Master's degree programme	10
Sum total of maximum allowable points:	100
Required minimum:	70

3.

Categories of mobility



2. 'Within the employment contract'

(a) EU worker moves within the same country

- 'Posting' or secondment in national situations
- National rules and policies
- Some examples: Italy and NL
 - Italy: strict provisions to limit the use of secondment (requirements mentioned in the national report)
 - The Netherlands: no legal definition of posting (only 'secondment'). Policy focus on 'sham arrangements' that are allegedly used to evade the applicability of binding employment laws and save on labour cost.

2. 'Within the employment contract'

(b) EU worker is posted to another country

- Posted Workers Directive
- National implementation
 - France: implementation of the Revised Directive in France
 - Germany: hard core terms for all workers in Germany (even if they are not posted) - art. 9 Rome I
- Diverging interests sending and receiving countries
- Issue of social dumping?
 - Austria: focus on inbound workers- Social Dumping Acts
 - The Netherlands: focus on inbound workers- combat against social dumping
 - Belgium: focus on inbound workers - Limosa declaration
 - France: focus on inbound workers- bogus constructions
 - Italy: less posting situations - relocation of the business
 - Spain: Spanish workers don't want to be posted (cultural factors, language)

- Administrative requirements in the host country:
 - Duty to report for foreign service providers in advance to provide where and when and with which employees work will be performed
 - Austria, Belgium, France, Italy and Germany: digital notification
 - Netherlands: creation of the digital notification system in progress
 - Also: obligation to provide information to the Inspectorate if requested, to have certain documents (such as payslips) and to have a contact person.

2. 'Within the employment contract'

(c) EU worker is posted to non-EU country

- Depends on law in non-EU country

2. 'Within the employment contract'

(d) Non-EU worker is posted to a Member State

- By a third country company
- By a company in a EU member state
 - For example: Moldavian worker is recruited by a Polish company (with a valid Polish work permit) and is posted to the Netherlands - *can the Netherlands set national immigration requirements?*
 - Possibilities to circumvent national immigration law requirements for non-EU workers in a certain country by entering in another (less strict) Member State?

3.

Categories of mobility

Worker mobility

1. 'Within the labour market'

- a. EU worker finds work in own Member State
- b. EU worker finds work in another Member State
- c. EU worker finds a job in non-EU country
- d. Non-EU worker finds a job in a Member State

2. 'Within the employment contract'

- a. EU worker moves within own Member State
- b. EU worker is send to another Member States
- c. EU worker is send to a non-EU country
- d. Non-EU worker is send to a EU country

3. Topical issues: highly mobile workers and expats

3. Topical issues

- Highly mobile workers
 - Multiple countries in one day
 - Dutch case pending case at the ECJ: does the current PWD apply? (Revised PWD excludes international truck drivers)
 - In case of transit: German practice that German minimum wage should be applied if the work is performed in Germany - also for a few hours?
Infringement procedures European Commission

- Expats
 - Internal company policies

Thank you!

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