



# Prospects and challenges for future European labour market

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# Introduction

## ➤ General context:

- Recent case law ECJ;
- Scepticism and disappointment - lack of concrete results, achievements or 'small steps forward' - 'social' Europe and its future questioned;
- Lisbon treaty – ratification process;
- Dynamism 'acquis communautaire'.

## ➤ Brief outline presentation



# Preliminary remarks

## Different categories of workers:

- Migrant worker – free movement of workers;
- Posted worker in the context of the provision of services;
  
- Different regime applicable

## Importance transitional arrangements in accession treaties



# Impact free movement of workers in context of EU enlargement

➤ COM (2008) 765, 18.11.2008:

➤ Employment in Europe 2008, chapter 3

<http://ec.europa.eu/social/main.jsp?catId=119&langId=en>.



# Impact free movement of workers in context of EU enlargement -2

## ■ Some important conclusions:

- ✓ Exact size of post-enlargement mobility flows is difficult to determine;
- ✓ Has not led (and unlikely to lead) to serious labour market disturbances;
- ✓ To large part temporary;
- ✓ Significant in absolute terms – rather modest in relation to overall population;

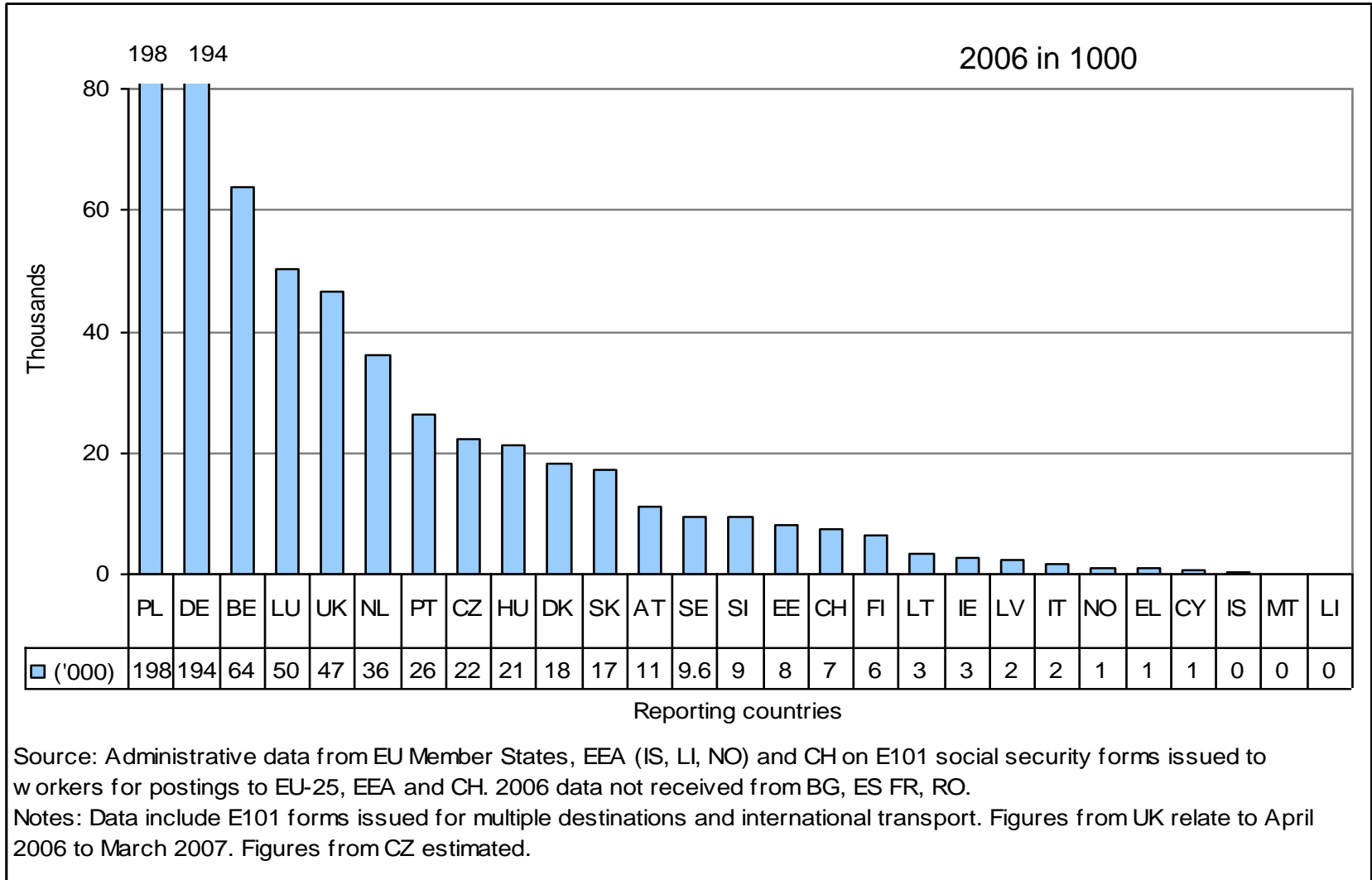


# Impact free movement of workers in context of EU enlargement -3

- Some important conclusions (suite):
  - ✓ Clearly positive impact on economic growth;
  - ✓ Free labour mobility provides a much needed flexibility in both directions;
  - ✓ If anything, restrictions on labour market access will only delay market adjustments [link UDW];
  
  - ✓ Need to develop integration and social inclusion policies to tackle perceived « negative » side-effects;

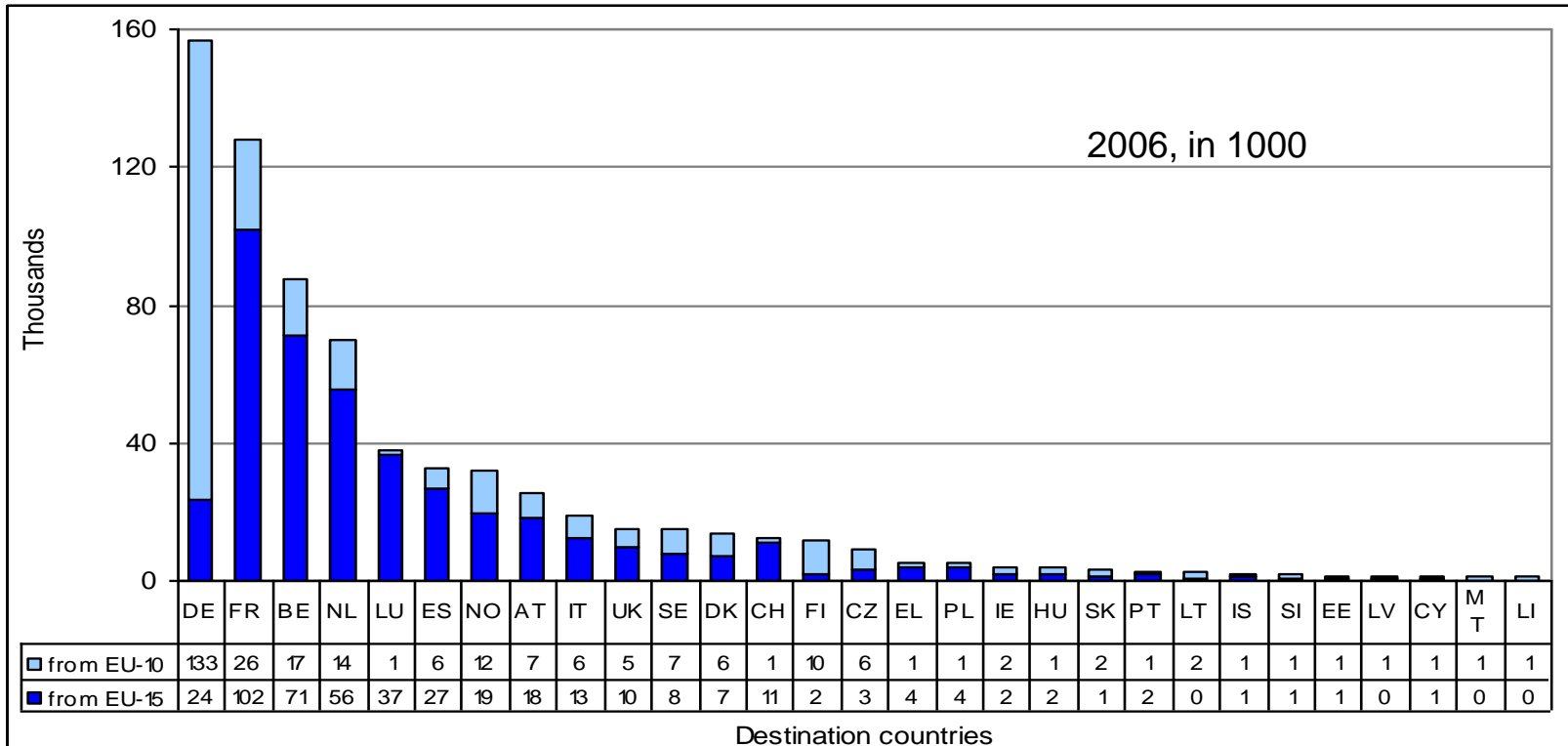


# Posted workers by sending country





# Posted workers by receiving country



Source: Administrative data from EU Member States, EEA (IS, LI, NO) and CH on E101 social security forms issued to workers for postings to EU-25, EEA and CH. 2006 data not received from BG, ES FR, RO.

Notes: Figures from CH not included, because not disaggregated by destination country. BG and RO excluded as receiving countries, because most countries did not supply figures. Figures from UK relate to April 2006 to March 2007. Not all figures from EL included (some data not disaggregated by destination country). Figures from CY relate to January to October 2006. Figures from CZ estimated.







# Directive 96/71/EC – posting of workers

## ➤ aim:

- ✓ Reconcile the exercise of companies fundamental freedom to provide cross border services under article 49 EC, with
  - ✓ The appropriate level of protection of workers rights temporarily posted abroad to proved them.
- In order to achieve that, it identifies the **nucleus of mandatory rules** (of general interest), clearly defined terms and conditions of employment for minimum protection that have to be complied with in the host country.



# Directive 96/71/EC – posting of workers

The directive thus provides for a **significant level of protection** for workers, which may be vulnerable given their situation, but also

Plays a key role in creating the necessary climate of **fair competition** between all service providers by **guaranteeing a level playing field**.



# Recent case law ECJ

- Judgments of 11 and 18 December 2007 in *Viking Line* (C-438/05) and *Laval* (C-341/05):
  - Fundamental rights vs fundamental freedoms.
  - Judicial activism or disastrous intervention?



# Recent case law ECJ –suite-

## Positive points:

- ✓ Right to take collective action recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures [but that, at the same time, the exercise of that right may be subject to certain restrictions and has to respect prevailing Community law];
- ✓ Since the Community has not only an economic but also a social purpose, the fundamental freedoms under the Treaty must be balanced against the objectives pursued by social policy, which include improved working conditions.





# Recent case law ECJ –suite 2-

## Positive points:

- ✓ Trade unions will continue to be able to take collective action provided that these actions are
  - Justified by a legitimate aim compatible with the prevailing Community law,
  - Appropriate to attain such aim, and
  - Proportionate.
  
- ✓ Ultimately for national courts to determine whether, and to what extent, this applies to the specific cases at hand.





# Recent case law ECJ –suite 3-

*in summary:*

- ❖ ECJ has not put into question the different social models chosen by Member States, nor
- ❖ the way they organise their labour relations and collective action as such.
- ❖ Collective action may be justified by the protection of posted workers against social dumping (provided that its exercise is in compliance with prevailing Community law, and more particularly, within the limits set out by the posting of workers directive).
- ❖ Clarification of a number of issues re interpretation of Directive 96/71/EC.





# Way forward - challenges

- existing legal framework (PWD) provides for sufficient possibilities to deal effectively with effects of recent case law;
- it is now matter for national authorities of countries mostly concerned to assess, together with their social partners, what needs to be done



# Way forward – challenges 2

## Pathways to increase effectiveness of PWD:

- Enhanced administrative cooperation:
  - ✓ Commission Recommendation 3 April 2008;
  - ✓ Endorsement by Council conclusions 9 June 2008;
  - ✓ Committee of experts to be set up
  - ✓ Formerly and regularly involving social partners.
  
- Tackle a number of outstanding interpretation issues





# Way forward – challenges 3

## Pathways to increase effectiveness of PWD:

- Launch in 2009 of wide-ranging series of studies on the application of the PWD;
- Invitation to social partners to carry out a joint analysis of the consequences of the rulings in the broader context of mobility and globalisation