

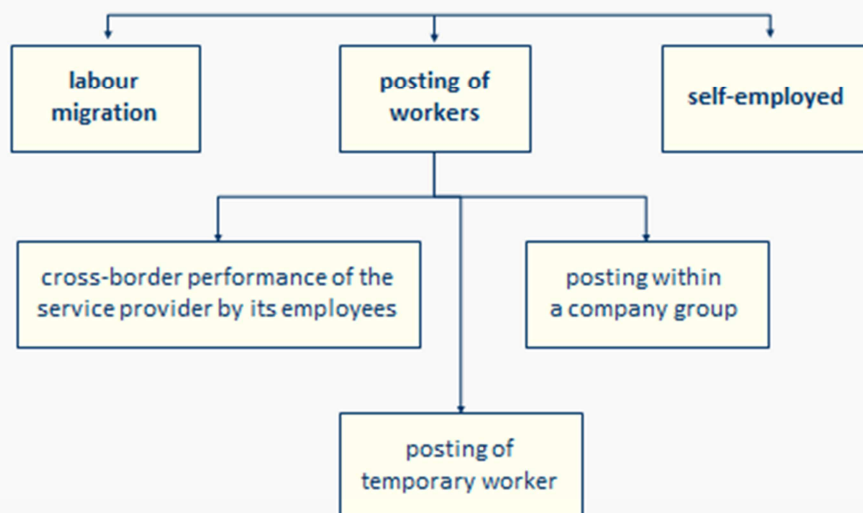
Prof. Dr. Claudia Schubert

## Regime Shopping Across Blurring Boundaries

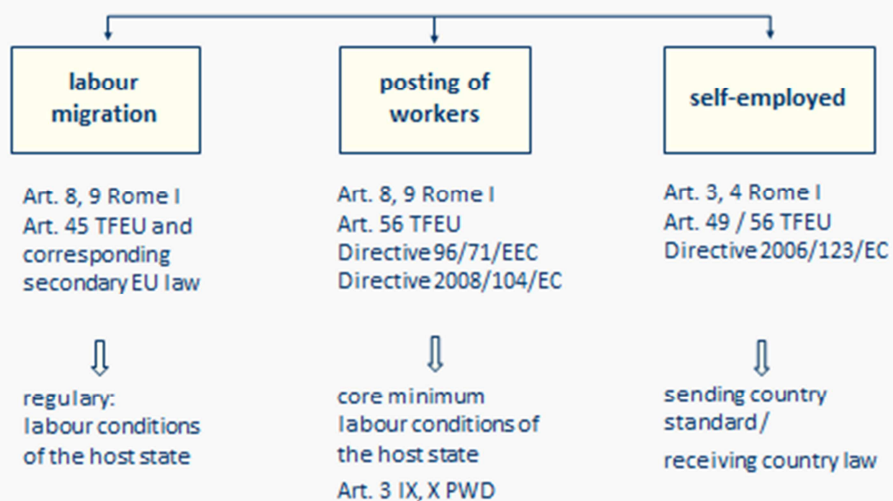
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### Cross border movement of labour

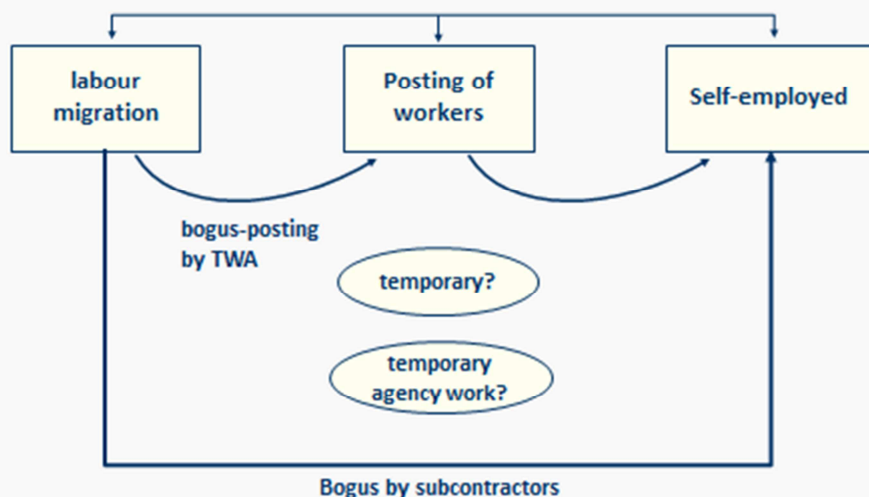
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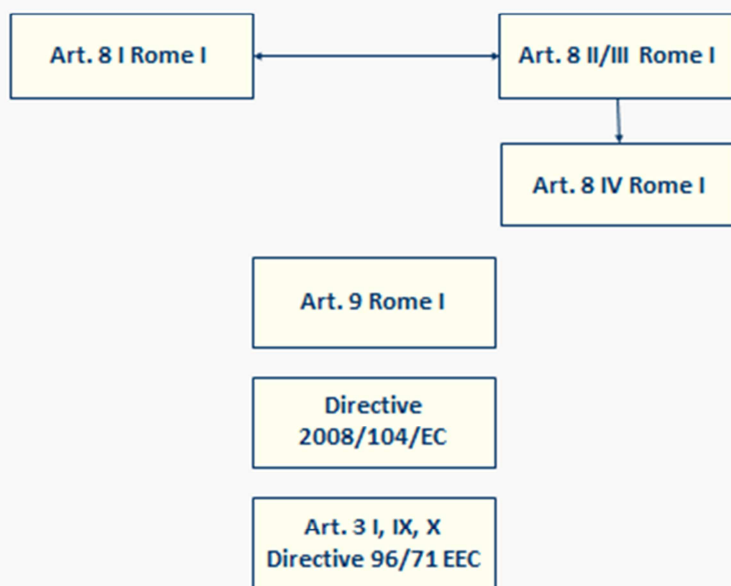
## Legal regime – labour costs



## Blurring boundaries



## Applicable law for cross-border temporary agency work



## Application of Art. 45 TFEU?

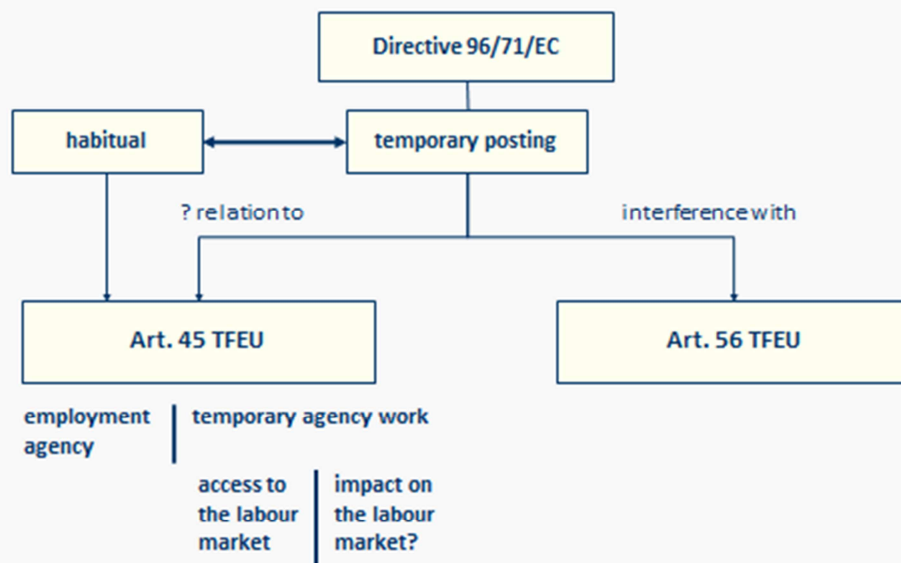
### The 2003 Act of Accession

#### Art. 24 - Annex XII

Nr. 2: [...] the member states will apply national measures, [...] regulating access to their labour markets by Polish nationals.

Nr. 13: In order to address serious disturbances or the threat thereof in specific sensitive service sectors on their labour markets, which could arise in certain areas from the transnational provision of services, as defined in Article 1d Directive 96/71/EC [...] Germany and Austria may [...] derogate from the first paragraph of Article [56 TFEU]

## „Temporary“ character of cross-border temporary agency work



## Employed/self-employed



### ECJ „Lawrie Blum“ (1986)

- for a certain period of time
- a person performs services for and under direction of another person
- receives remunerations in return



subordination  
personal dependency

### Directive 2010/41/EU

„pursuing a gainful activity for their own account“

### Directive 2002/15/EC

„[...] work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made

Employee

-

Worker

-

Self-Employed

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arbeitnehmerähnliche Person  
para-subordinati  
worker

Need for a third  
category?

Possible  
protection?

Conflict with the  
freedom of  
service?