

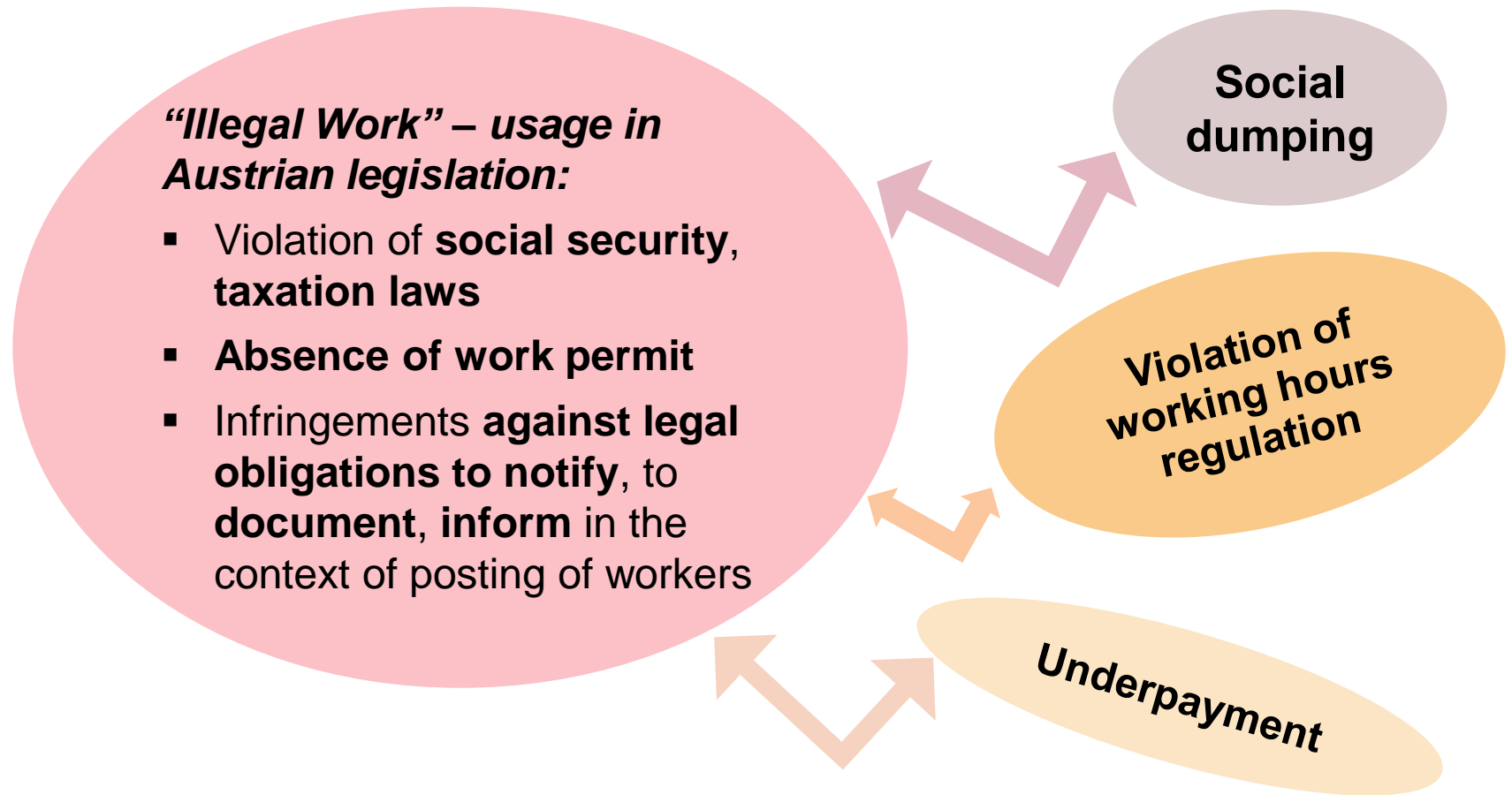
**EU-Directive 96/71/EC on Posting of Workers and
EU-Directive 2008/104/EC on Temporary Agency Work *vs. Illegal Work*
Implication and Implementation in Austria**

Bratislava, 26th of February 2015

Posting and hiring out of workers vs. Illegal Work: Context and elements - outline

- „Illegal work“ in a narrower sense and its **relation to posting of workers**
- **The Posting of Workers and the Temporary Agency Work Directive – key elements at EU-level**
- Transpositions of those Directives into Austrian legislation
- **Enforcement in Austria:**
Administrative requirements, control measures, liability of subcontractors and user undertaking
- **Developing instruments of enforcement among Member States:**
The Enforcement Directive 2014/67/EU

Towards confinement of „Illegal work“



Posting of workers and illegal work 1:

Bogus/fictional posting

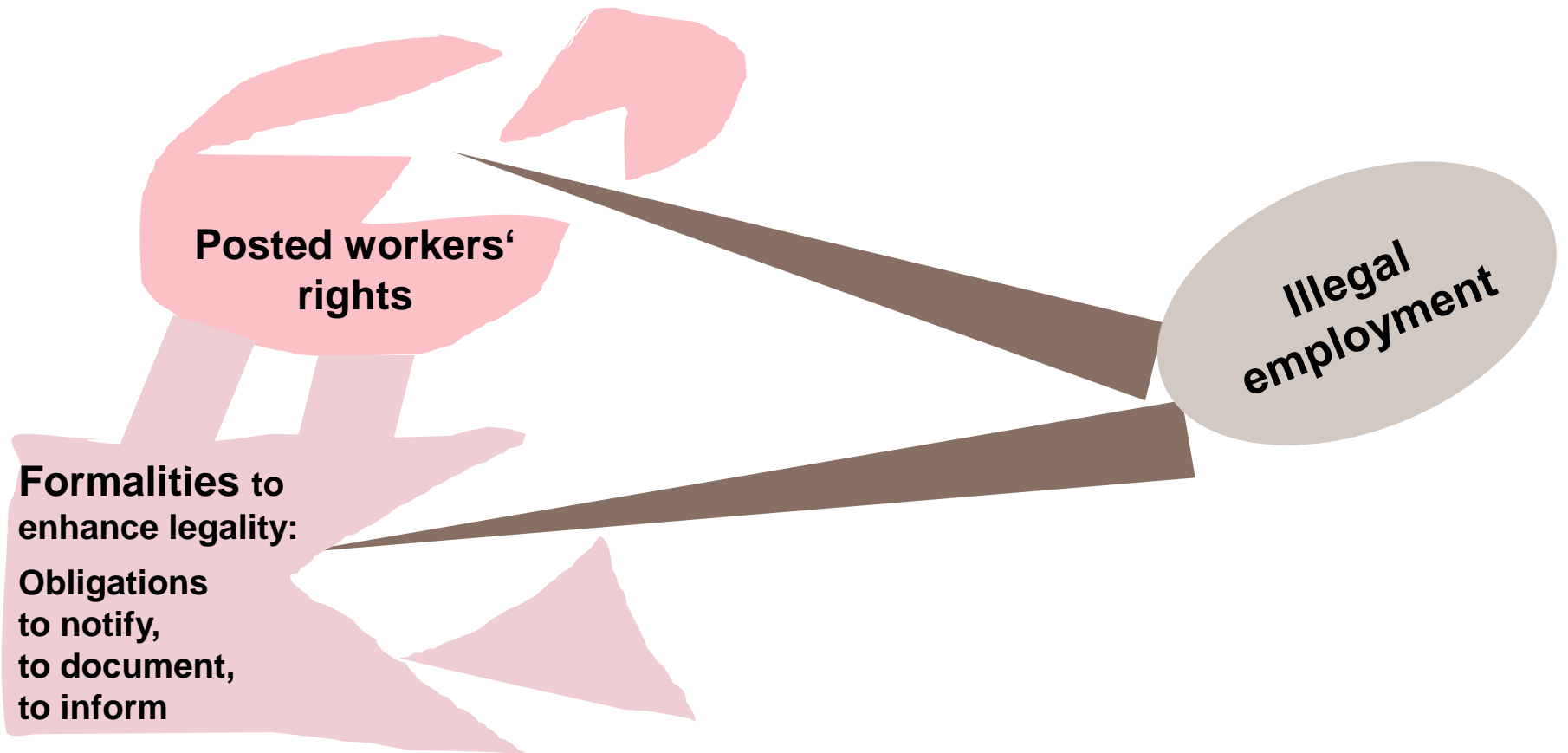
- **Illegality** ← **nonpayment or underpayment of social insurance contributions**
- **Posting merely is faked** so as to save payment into social insurance of the Member State in which the worker normally works
- The undertaking employing workers in another Member State does not perform substantial activities where formally it is seated („letter box company“)
- **Certificate concerning the applicable social security legislation** (A 1-certificate) is counterfeited or **unlawfully obtained**
- Practically impossible to go behind or falsify certificated affiliation to social security of the Member State of formal residence

Posting of workers and illegal work 2:

Noncompliance with formalities for the safeguard of working conditions

- **Illegality** ← **neglecting formalities** such as notification of posting, keeping documents available **may indicate serious breaches** of law as to **social insurance, taxation, employment of foreign workers**
- In Austria compliance with formalities related to the posting of workers is **controlled by tax authorities („Financial Police“)**
„Financial Police“ combats „illegal employment“
- Formalities **serve the institutional safeguard of working conditions** posted workers are guaranteed

Noncompliance with formalities and illegal work



Robert Murr

Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

The rights of posted workers in substance:

EU-Directive 96/71/EC concerning the posting of workers

- Posted workers are **subject to working conditions laid down in the host country:**
 - minimum rates of pay
 - working time and rest periods
 - occupational safety and health
 - maternity protection and protection of young people
 - annual leave
 - conditions of hiring out workers
 - non-discrimination
- Working conditions laid down **by laws, regulations or administrative provisions or by collective agreements universally applicable**
- **Additionally applicable law:**
 - **public policy provisions** in the host country (Art. 3 par. 10)
 - **more favourable** in the country of establishment (Art. 3 par.7)

The rights of temporary agency workers in substance:

Posting Directive and EU-Directive 2008/104/EC on temporary agency work

- **Posting of temporary agency workers** is a special case regulated by the Posting Directive
- Working conditions in the host country which exceed matters of the Posting Directive, may be extended to temporary agency workers who have been posted
- Key regulation Art. 5 EU-Directive 2008/104/EC:
Equal treatment of temporary agency workers and **workers directly recruited by the user undertaking** regarding
 - pay
 - working time
 - annual leave
 - maternity protection and protection of young people
 - non-discrimination