

GMS Flash Alert

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European Union – Court Rules A1 Certificate Is Binding for Social Security Only

The European Court of Justice (ECJ) has ruled in a recent case that A1 certificates issued to document an individual's affiliation to a social security regime in a European Economic Area (EEA) country or Switzerland have binding effect solely in the area of social security.¹ The A1 certificates cannot have a binding effect in the area of labour law.

WHY THIS MATTERS

It is important for companies that post employees to France to note these employees are not necessarily considered to be posted in the context of French labour law, but local French labour law might apply more extensively in relation to the terms and conditions of the employment.

French labour codes provide a definition of a "posted worker" (code L1261-3) and specification of a border, so to speak, between the freedom to provide services and the freedom of establishment (code 1262-3). These specific French labour codes could be in breach of EU legislation as they limit the scope of workers who can benefit from EU legislation on the posting of workers. However, the ECJ determines that the validity of French labour codes cannot be challenged through the EU legislation on social security and European A1 certificates for social security.

Description of Case C-17/19

The defendant in the case is a large French multinational industrial group established in France and the company was awarded contracts for the construction of a "new generation" nuclear reactor in France. The defendant formed a limited partnership with two other undertakings that subcontracted the contracts to an economic interest grouping.

That grouping itself used subcontractors including a company established in Romania and a temporary employment company established in Ireland with a subsidiary in Cyprus and an office in Poland.

It was discovered that there were more than 100 unreported workplace accidents and the companies were prosecuted in France for concealed employment and an unlawful provision of workers.

Rulings in French Courts

Among other things, the French courts found that the Romanian company failed to submit declarations relating to the wages and social security contributions for the workers prior to engaging them. The French courts ruled that the activity of the Romanian company in France qualified as habitual, stable, and continuous, and because of that the company could not rely on legislation for the posting of workers. Furthermore, the French courts noted the majority of workers was hired for a short time before being posted to France and that the company's activity in Romania was only ancillary to its activities in France. Certain postings to France had lasted for more than 24 months.

KPMG NOTE

The fact that habitual, stable, and continuous activity excludes the application of the legislation for the posting of workers is based on French labour law and not on EU legislation for the posting of workers.

As for the company based in Ireland that supplied temporary workers from Poland through its Cypriot subsidiary and an office of that subsidiary in Poland, the French courts found that this was a case of concealed employment. The subsidiary was not registered in the commercial and company register in France and it had no business activities in either Cyprus or Poland. Finally, the French courts found that although the French companies asked the Irish company to provide documents for the temporary Polish workers, in particular E101/A1 certificates for social security, they continued to employ those workers without the documents being sent to them.

KPMG NOTE

It is important to note that the requirements for administrative compliance are a responsibility of both the home and host companies.

Ruling of ECJ

The ECJ was asked to determine if the issued E101/A1 certificates for social security as multi-state workers have a binding effect on the authorities in the host country for applicable legislation for social security and employment law.

The ECJ ruled that the binding effect of the E101/A1 certificates is limited to the area of social security which is the subject of the EU Regulations for social security². The ECJ abstained from providing the national French courts with an interpretation of EU law that may be useful to them in assessing the effects of their provisions.

KPMG NOTE

The result of this ruling is hardly surprising and it is likely that nobody involved in the case expected a different result. So, why refer this case to the ECJ?

The core of the issue in this case is the French labour codes that have a much narrower scope for posted workers than what is set out in EU legislation and applied in other EU countries. The effects of these national French labour codes are that posted workers in relation to employment law are “absorbed” by French labour law in many more instances than would be the case in other EU countries. This could well be a breach of EU law. The ECJ did not use this opportunity to comment on the provisions of French labour law that limit the application of EU legislation for employment in terms of the posting of workers. That could have been what the parties sought to obtain from the ECJ, but it did not happen.

This means that when companies post employees to France, they must assess the postings under more restrictive criteria in order to determine to what extent they must comply with French labour law.

FOOTNOTES:

- 1 For the full judgement in case C-17/19 (*Bouygues travaux publics and Others*), click [here](#).
- 2 Regulations (EC) for social security [no 883/2004](#) and [no 1408/71](#).

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