GMS Flash Alert

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European Union - Court Rules that A1 Certificate Can Be Withdrawn

On 16 November 2023, the Court of Justice of the European Union (CJEU) delivered a ruling[1] clarifying conditions for withdrawal of the A1 certificate for social security by the member state that issued it.

WHY THIS MATTERS

Employers and mobile workers should make sure that conditions under which an A1 certificate is issued are met for the entire duration of the certificate. The competent authority that issued the A1 certificate can withdraw/annul such certificate without announcing it to the other member state and without ascertaining that the affiliation to social security in the other member state is in place first.

Failing to affiliate to social security in the competent member state can lead, in the best case, to a lot of administration and corrections, and in the worst case, it can lead to loss of social security rights.

About the Case

A self-employed businessman in Poland signed a contract with a company established in Poland and according to this contract, he was required to provide services in France for the duration of a specific project there.

The competent authority in Poland issued an A1 certificate for coverage under the Polish social security regime to the aforementioned businessman under rules for work in two or more member states (multi-state work).

Upon a review of the issued A1 certificate, the Polish authority concluded that the businessman was working only in France during the project and that the conditions for issuing an A1 certificate under rules for multi-state work were not met. The businessman should have been covered by French and not Polish social security.

The Polish authority decided to withdraw its issued A1 certificate.

The CJEU was asked if the Polish authority that withdrew the A1 certificate was obliged to make arrangements with the competent authority in France for correct affiliation to the French social security regime or if such withdrawal is provisional in its nature and could become final once France indicated it did not object to the withdrawal.

The CJEU concluded that a member state that has issued an A1 certificate can withdraw such certificate on its own initiative and without first launching a dialogue and conciliation procedure with the member state competent for social security as laid down in Regulation 883/2004 for the coordination of social security systems[2].

KPMG INSIGHTS

The CJEU has signalled with this ruling that dialogue and conciliation procedures laid down in EU rules for the coordination of social security systems do not have a broad scope and is only intended for specific situations. Furthermore, the ruling confirms that rights and obligations in respect of social security derive from the rules themselves and not from the A1 certificate, which means, among other things, that it is possible for the issuing member state to withdraw/annul its A1 certificate without having to make sure that the correction regarding affiliation to the member state competent for social security is processed first. Such obligation exists without the A1 certificate.

A member state that has issued an A1 certificate can withdraw/annul that certificate if the member state establishes that conditions for such certificate are not met, without initiating any dialogue or conciliation procedure with the other member state's competent authority for social security.

It is essential that companies and mobile workers ascertain that a mobile worker is affiliated to social security in the competent member state under EU rules for the coordination of social security systems. If the conditions under which an A1 certificate is issued are not met, such certificate can be withdrawn with retroactive effect by the issuing member state.

FOOTNOTES:

1 Court of Justice of the European Union: Case C-422/22 ZUS v TE, 16 November 2023.

2 European Union: Regulation 883/2004/EC on coordination of social security systems, 29 April 2004.

3 Court of Justice of the European Union:, 29 April 2004.

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Contact us

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