



Global Employer Services

Social security

National courts can disregard A1-forms with proven fraud

Context

Regulation 883/2004 determines the applicable social security legislation where secondment or simultaneous employment within the European Union is concerned.

An A1 form, issued by the competent social security authority (with applicable social security legislation), serves as proof to other administrations that the person is paying social security contributions in the competent country and is exempt in other countries.

Previously, the Court of Justice of the European Union (CJEU) repeatedly ruled that an A1 is binding and irrevocable in other countries, until it is withdrawn by the issuing administration (as result of an administrative cooperation procedure). Without such withdrawal, the host country's authorities and courts cannot disregard the A1 form to apply their own social security legislation. This remains the case even if the form was issued based on incorrect facts. The Court's decision in the "*Altun case*", dealing with fraudulently obtained A1 forms, has clearly refined this case law.

A1 form disregarded if fraud is proven

From the *Altun case*, one can conclude that the legally binding nature of an A1 form remains, but that an exception to this principle can be introduced if fraud is brought to light. In such

case, the host country's national courts can disregard the A1 document, even if not withdrawn by the issuing country.

However, the CJEU imposed strict conditions for disregarding an A1:

- The conditions for obtaining the A1 document were not fulfilled (objective element)
- The fact that the conditions were not met was intentionally hidden by applicants to obtain the benefits of an A1 document (subjective element)
- The issuing state must have failed to review or withdraw the A1 document in due time, after the host state's request. The host state's request should contain concrete and solid evidence of such fraud
- The right to a fair trial needs to be respected, meaning that the A1 can only be disregarded after adversarial legal proceedings

Case law impact

This case law clearly removes the A1 document's irrevocable nature. Inspection services and social security authorities will have additional powers to challenge an A1 document's validity.

However, social security authorities still do not have the powers to autonomously disregard an A1, and are thus obliged to take a (very strong) case to court, after a request is made to the issuing state, from which there is a lack of action. Hence, although the process for contesting and withdrawing an A1 form because of fraud will remain burdensome and lengthy, the EU Court has taken a clear position in the combat against social fraud, while clearly honouring the accused's procedural rights.

In light of the above, it is therefore increasingly important for employers to make sure that all factual elements of the employment situation are clearly presented to the authorities when filing A1 applications. In addition, specific scrutiny is recommended when working with foreign subcontractors or intra-group assignees, as an A1 form's invalidity can lead to severe financial and reputational damage for the host company. In general, any relevant changes occurring during an A1 form's validity period should be correctly reported in timely fashion to the authorities, as they may have an impact on the applicable social security legislation.

Deloitte's social security team, in collaboration with the independent law firm Laga, is readily available to assist companies in these matters.

Contacts

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