



Peer Learning Dialogue: Bogus posting under social security rules

Report from the peer learning dialogues

25 June 2026



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The author would like to thank all of the participants for their contributions during the peer learning dialogues, Ms Roberta Fenech and Mr Janus Jais Eriksen, coordinators of this PLD at ELA, Mr Vit Holubec, Senior Social Security Coordination Officer at ELA, and Ms Flavia Colonnese, Associate Director at Ecorys, for kindly supporting the entire process.

Manuscript completed in June 2026.

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1.0 Introduction

This report documents the outcomes of two Peer Learning Dialogues (PLDs) on the same topic: *Bogus posting under social security rules*. PLDs are a series of discussions between a small group of representatives from the European Platform tackling undeclared work¹, and/or their nominated representatives, to explore an issue in greater depth.

The PLDs focused on the key aspects of posting and the implementation of posting rules in practice, with a link to social security coordination rules. They provided a space to not only explore bogus posting from the perspective and through the experience of both sending and receiving Member States, but also to identify lessons learned to improve the effectiveness of posting rules in the future and enhance cooperation across the EU, particularly to verify whether posting conditions are met before and during the posting period.

Representatives from a total of fifteen countries took part in the two PLDs: Austria (AT), Belgium (BE), France (FR), Finland (FI), Germany (DE), Spain (ES), Ireland (IE), Italy (IT), Malta (MT), the Netherlands (NL), Norway (NO), Poland (PL), Portugal (PT), Slovenia (SI), and Slovakia (SK). For the purpose of this report, all mentioned countries will be referred to as 'Member States' (Norway, although not member of the EU is bound by social security coordination rules by way of the EEA agreement),² 'States' or 'countries'. Participants in both PLDs included representatives from social security institutions, labour inspectorates, and tax and customs authorities, from both sending and receiving countries.

The PLDs took place across two in-person meetings, each complemented by an online follow-up discussion, organised between October 2025 and March 2026:

- In-person meetings (two days each): During the first day, participants focused on discussing posting as an exception to the general rule of applicability of social security legislation of the place of work; examining comparisons with other exceptions of multi-state activities; assessing posting conditions in practice on the worker's and employer's side; and sharing experiences on ex-ante verification procedures. On the second day, participants explored posting conditions and their effective verification, with particular attention to ex-post mechanisms to investigate breaches of posting rules, and sanctions and penalties for bogus postings;
- Online meetings (one day each): Participants discussed lessons learnt to improve approaches to preventing, detecting and tackling bogus posting under social security coordination rules and jointly formulated suggestions for actions that could be implemented by social security institutions, enforcement authorities (like labour inspectorates), and supported by ELA.

Hence, the PLDs had the following objectives:

- (1) **Looking back:** Discussing challenges and lessons learned on the effectiveness of ex-ante and ex post procedures, as well as good practice examples.
- (2) **Looking forward:** Identifying procedures and cooperation mechanisms to be improved in practice to strengthen genuine postings.

The in-person meetings of both PLDs concluded with a set of actions which participants took forward and tested or explored in their home countries in the period preceding the online meeting. The lessons learned from these

¹ The European Platform tackling undeclared work supports the activities of the European Labour Authority and the cooperation between national authorities in the fight against undeclared work in Member States and in cross-border situations in the EU.

² See <https://www.nav.no/en/home/rules-and-regulations/relatert-informasjon/coming-from-an-eu-eea-country-to-work-in-norway>, March 2026.



actions were then reported and reflected upon. The outcomes of these actions and the discussions during the three days of meetings on the experiences with the tested actions have been included in this report.

The present report aims to **summarise the key issues** that have been discussed during the two PLDs with a view to sharing these with Member States and ELA to contribute to peer learning. It also presents some of the actions that PLD participants have tested in their home countries during the short period prior to the online meetings of the respective PLDs. Each key section is divided into an analytical part, titled 'Introduction', and a discussion part, titled 'Dialogue'. Finally, the report **presents the main reflections and suggestions for future actions** that could be considered by Member States and by ELA.

2.0 Background

Free movement of workers within the European Union (EU) is, since the Treaty of Rome (1957), one of the cornerstones of the process of economic integration through the internal market. Obstacles hindering the mobility of EU workers have been considerably decreased to work towards a single EU labour market, particularly in the context of the EU 2020 targets on smart and inclusive growth.³ Moreover, alternative ways to move within the EU have been developed, including **the cross-border posting of workers and the mobility of posted self-employed persons**. Overall, the goal is to treat all economically active persons equally, at least in relation to access to social security. For example, article 48 of the Treaty on the Functioning of the European Union (TFEU), under the chapter on free movement of workers, now applies to both employed and self-employed workers, demonstrating ongoing efforts to provide equal treatment to all economically active persons.⁴

Following the accession of Member States in 2004, 2007 and 2013, **the number of posted workers from acceding countries to other Member States increased considerably**. Nevertheless, posting also takes place between Western European Member States as well as between Central and Eastern European Member States. In recent years, **posting from countries outside the EU (third countries) has also increased** (1 in 4 posted workers is from a third country).⁵ It is predominately based on bilateral social security agreements or intra-company mobility. However, third country nationals may also be posted between the Member States. However, the present PLD was not focused on third country nationals being posted to or within the EU.

In 2024, 3.6 million posting certificates (PDs A1 under Article 12 Regulation (EC) 883/2004) were issued to an estimated number of 2.2 million persons. The average duration of posting was 40 days, with posted persons being posted 1.6 times per year on average. The main sending Member State was Germany with around 1.8 million PDs A1 issued to 1.15 million persons, or more than half of all PDs A1 issued under Article 12.⁶ Data shows that Germany was followed by Italy (269 000 PDs A1), which in 2024 surpassed Poland (256 000 PDs A1). Germany was also the main receiving Member State, followed by France, and Austria, as well as Switzerland, the Netherlands, Spain, and Belgium to a lesser extent. The top three flows went from Germany to Austria (269 703 PDs A1), from Germany to France (209 763 PDs A1), and from Germany to Switzerland (175 076 PDs A1). Only a few Member States were 'net senders' (i.e., more PDs A1 issued than received). They were Germany, Poland,

³ Houwerzijl M., Verschueren H.: Chapter 4, free movement of (posted) workers and applicable labour and social security law, in: Jaspers T., Pennings F., Peters S, European labour Law, 2024, p. 166. Interestingly, movement across Europe seemed to be free before the First World War. Only after that war did the crossing of borders by foreigner nationals begin to be considered a security concern, leading to the introduction of passports and visas. Ibid, p. 165.

⁴ For the coordination of social security of economically non-active persons moving within the EU, Articles 115 and 352 apply.

⁵ KPMG, GMS Flash Alert 2024-222, European Union – Postings in EU on Rise, While Number of Posted Non-EU Nationals Increases, November 12, 2024. European Commission Communication on The Single Market: our European home market in an uncertain world, A Strategy for making the Single Market simple, seamless and strong, COM(2025) 500 Final, Brussels, 21.5.2025, p. 14.

⁶ De Wispelaere F., De Smedt, L., Pacolet J.: Posting of workers, Report on A1 Portable Documents issued in 2024, HIVA-KU Leuven, October 2025, European Union, p. 12.



Slovakia, Italy, Slovenia, Lithuania, Luxembourg and Croatia. The other Member States were 'net recipients' (i.e., more PDs A1 received than issued), particularly France, the Netherlands, Switzerland, Austria and Belgium.⁷

In most Member States, the share of registered posted workers in total employment is below 1 %.⁸ In terms of sectors and industries, in 2023, especially in the construction sector, the impact was rather high for several Member States, particularly in France, Austria, the Netherlands, Denmark, and Sweden.⁹ More generally, **postings tend to be concentrated in labour-intensive industrial ecosystems, such as construction, road freight transport, manufacturing and services** (e.g., health and social services).¹⁰

The **coordination of social security systems in the EU should enable all kinds of cross-border labour mobility, including postings**. To this end, the EU has developed several frameworks to regulate the posting of (employed and self-employed) workers across Member States in relation to social security. These frameworks include the so-called Social Security Coordination Regulations (as interpreted and applied by the Court of Justice of the European Union) - Regulation (EC) 883/2004 on the coordination of social security systems (also referred to as the Basic Regulation) and Regulation (EC) No 987/2009 laying down the procedure for the Basic Regulation; as well as Decision A2 of the Administrative Commission¹¹ and the Practical Guide on the applicable legislation.¹²

Despite ongoing efforts to protect posted workers, companies and social security administrations, and avoid unnecessary workload and bureaucracy, challenges persist. For instance, ongoing practices, such as hiring posted workers from a Member State with lower social security contributions, lowering labour costs in receiving countries – in some sectors 50% lower when compared to local workers – may result in labour market distortions. Furthermore, high demand for 'cheap labour' paired with workers' availability to move seems to have led to an increased reliance on migration facilitators, ranging from bona fide temporary work agencies and subcontractors to middlemen and gangmasters operating in the shadow economy.¹³

These challenges are particularly relevant for bogus posting, and can only be tackled through effective compliance checks, in addition to the correct use of portable documents (PD) A1 (confirming the affiliation to the social security system of a sending Member State). Bogus or fraudulent posting occurs when an employer or self-posted person engages in practices to avoid legal and financial obligations, and fraudulently posts/receives workers to/from another Member State. The aim may be to misclassify workers or self-employed persons as posted workers to avoid paying social security contributions in the receiving country, effectively undermining labour and social standards and potentially exploiting workers. Bogus posting can take many forms, including: creating a false representation of a worker's employment situation (e.g. disguising real employment in the receiving country, where the receiving employer is actually employing the mobile workers but evading its obligations under the social security rules in the receiving country); claiming a worker is a posted worker when they are not; manipulating the length of posting to stay within the two-year limit for continued coverage under the sending country social security system; workers being temporarily posted under the false status of self-employment (bogus self-employment); employers intentionally not paying the correct level of social security contributions; or the use of false PD A1s to evade posting conditions.¹⁴

⁷ Ibid., p. 12-13.

⁸ The figure is more substantial in Luxembourg (14.5%), Belgium (4.4%), and Austria (2.6%). De Wispelaere F., De Smedt, L., Pacolet J., : Posting of workers, Collection of data from the prior declaration tools, Reference year 2023, HIVA-KU Leuven, European Union, 2025, p. 11.

⁹ Ibid.

¹⁰ ECIPE, Posted Workers in the EU: Social Dumping vs Competitive Advantage, December 2017.

¹¹ DECISION No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State, (2010/C 106/02).

¹² European Commission (2013), Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland.

¹³ Houwerzijl M., Verschueren H., 2024, p. 168.

¹⁴ European Parliament, Posting of workers, Factsheets of the European Union, 2025. Eurofound, Fraudulent contracting of work: abusing the posting of workers (Belgium, Finland and Italy), European Union, 2017.



Bogus posting may result in social dumping and can therefore have serious consequences for workers by undermining their rights and working conditions. It can also undermine fair competition, as receiving countries may suffer losses in social security contributions, while local workers face pressure on wages and job security due to unfair competition from artificially cheaper posted labour. Additionally, **bogus posting erodes trust in the internal market** by fostering resentment among workers and employers alike and complicates cross-border enforcement of labour and social security rights.¹⁵

While the EU and its Member States have taken steps to address bogus posting through legislative and institutional measures, data sharing, information exchange and cooperation; **effectively combatting bogus posting under social security rules remains challenging**.

The effectiveness of compliance checks remains a specific topic of concern. Member States have taken a simplified approach to compliance checks to reduce red tape and excessive costs, and to align with the need to issue PD A1s promptly, usually before the start of the posting. **Compliance checks** (e.g., ex-ante verification procedures, inspections of PD A1s, and ex-post mechanisms to investigate breaches of posting rules during or after the posting period) **might face difficulties in practice**. Despite the establishment of the Enforcement Directive on Posting of Workers,¹⁶ dealing with free movement and labour law aspects of posting, the European Commission has issued reasoned opinions to 17 Member States for failing to align their national provisions with the Directive's requirements, particularly concerning fraud prevention, administrative cooperation, and the imposition of effective penalties.¹⁷ The reliance on manual procedures and physical documents and the delayed implementation of digital solutions are also considered to hinder the swift resolution of administrative activities, impacting the effective enforcement of social security obligations.¹⁸

The posting of workers lies at the heart of ELA's mandate, as it represents one of the most dynamic yet vulnerable aspects of cross-border labour mobility in the EU. While legitimate posting enables companies to provide services across Member States, abusive or bogus posting practices undermine fair competition, distort the internal market, and expose workers to heightened risks of exploitation. Addressing such practices is therefore a key priority for ELA, which plays a central role in supporting Member States to coordinate inspections, exchange information, and ensure that the rules on posting are applied consistently and fairly across the Union. **Posting 360 is a multi-annual mutual learning and understanding programme run by ELA in close cooperation with the European Commission to strengthen and deepen cooperation between ELA, the European Commission, the Member States, and the social partners with a view on ensuring the effective enforcement of EU and national rules on the posting of workers**. The objectives of the programme are to examine outstanding or complex implementation and enforcement challenges in the field of posting, to promote, share and contribute to disseminating good practices between the Member States, also with the contribution of the social partners, to promote and support mutual assistance and explore synergies and cooperation with other EU bodies, including the Administrative Commission for the Coordination of Social Security Systems, Agencies or social partners on specific projects. Posting 360 aims to address these objectives through a variety of instruments and activities, and by convening experts from the areas of labour law and social security coordination, also to reflect the tight interaction between the two dimensions in the daily practice of enforcement authorities, posted workers and their employers. The Posting 360 Programme includes a Forum on the Posting of Workers where ELA and the Commission convene experts and practitioners from the competent national administrations and the social partners.

¹⁵ Ibid.

¹⁶ Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') OJ L 159/11, 28 May 2014.

¹⁷ Insight EU Monitoring, EU Posting of Workers: EU Commission calls on 17 Member States to comply with Directive', 2023.

¹⁸ European Economic and Social Committee, Digitalisation in social security: Press Summaries, 2024 and European Trade Union Confederation, Commission delays digital social security: Press Release, 2023.



3.0 Defining and framing the posting of workers

3.1 Posting as an exemption to the general *lex loci laboris* principle

Introduction

One of the most discussed chapters of Social Security Coordination Regulations¹⁹ is the one governing the applicable legislation. This chapter contains conflict rules in cross-border social security matters, which influence the social security of persons moving within the EU. Due to distinct structural issues (e.g. new forms of working and living together), cultural elements (e.g. legitimacy of new legislature and its practical implementation)²⁰ and policy preferences, social security systems may vary considerably across countries. As such, **moving within the EU is impacted by differing approaches to social security rules**,²¹ and entitlements heavily depend on the applicable national social security rules. Under the EU Treaties, Member States have retained the (exclusive) sovereign power to define their own social security systems.²² Therefore, a person moving to a different country may be better or worse off in the social security system of that country.

A complete and uniform system of conflict rules must ensure that people moving within the EU are subject to the social security system of a single Member State. Based on this approach, the so-called state-of-work or *lex loci laboris* principle applies: it states that, for workers, **only the law of the Member State where economic activities are performed is applicable**.²³ The *lex loci laboris* principle aims to ensure equal treatment of all people working on the territory of a Member State, in accordance with the right to equal treatment for migrant workers. This principle also applies to social security provisions.²⁴ As a consequence, migrant workers should be treated in the same way as local workers and employers have an obligation to pay social security contributions in the country in which their workers are active.²⁵

Nevertheless, as not all Member States base their social security system on economic activity, and work is not always performed physically in the Member State competent for the social security of posted workers (and can also be delivered remotely from the country of insurance or residence to a receiving country), **questions arise as to whether this approach remains the most appropriate**. Moreover, as **countries often have their own definition of work, self-employment and non-economic activities**, this might lead to difficulties in social security coordination.²⁶ Furthermore, **patterns of mobility have shifted from more static, longer-term mobility towards more dynamic and shorter-term mobility**. The Posting Directive²⁷ itself covers three different types of posting, as outlined in Article 1(3): posting to carry out service contracts in the context of transnational subcontracting; transnational intra-company transfers; and transnational temporary agency work. It should be

¹⁹ Regulation (EC) 883/2004 and Regulation (EC) 987/2009.

²⁰ Berghman J, The invisible social security In: Oorschot W & Peeters H & Kees B (eds), Invisible Social Security Revisited, 2014, p. 37.

²¹ CJEU argued that 'Article 18(1) EC cannot guarantee to an insured person that a move to another Member State will be neutral as regards social security', case C-208/07 *von Chamier-Glisczinski*, EU:C:2009:455.

²² Houwerzijl M., Verschueren H., 2024, p. 229.

²³ Founding Member States (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) build their social security systems on social insurances for workers (and their family members).

²⁴ See e.g. case C-41/84 - *Pinna v Caisse d'allocations familiales de la Savoie*, EU:C:1986:1, and C-328/20 - *Commission v Austria (Indexation des prestations familiales)*, EU:C:2022:669.

²⁵ Rennuy N., 2020, p. 213.

²⁶ Strban, G.: Chapter 13 Social Law 4.0 and the Future of Social Security Coordination, in: Becker U., Chesalina, O. (Eds.), Social Law 4.0, New Approaches for Ensuring and Financing Social Security in the Digital Age, 2021, p. 335 and Strban, G., New Forms of Organising Work and Challenges for Coordinating National Social Security Systems in the EU, in: Becker U., Chesalina, O. (eds.), Social Law 4.0: Update, 2025, p. 91.

²⁷ Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L 18, 21.1.1997



noted that social security coordination of posting situations does not refer to the Posting Directive. For instance, if no services are provided in the internal market (e.g., no extra payment to the employer or self-employed posted worker), special rules of posting in the framework of social security coordination still apply.

From the very beginning of the establishment of the internal market, it was acknowledged that the law on the free provision of services may interfere with the law on free movement of workers and their social security rights. This was foreseen in situations where an employer exercises the right to provide a cross-border service. Provision of services often involves workers who temporarily move across a border to carry out their tasks and are posted by the provider of such services. As early judgments of the Court of Justice of the European Union (CJEU) show,²⁸ employee posting was already a phenomenon in the late 1960s and early 1970s. Traditionally, only ‘key personnel’ such as managers, professionals and specialist technicians were posted, but due to a ‘Europeanisation’ of competition law and public procurement law, from the late 1980s onwards it became popular to post workers in the construction sector.²⁹ Limited aspects of posting were already included in the first Social Security Coordination Regulation from 1958.³⁰

Special rules apply in the case of the secondment (posting) of workers to another Member State. These allow the posted workers to remain under the social security rules of the sending country, and avoid administrative complications linked to moving across different social security systems,³¹ and possibly leaving posted workers without social security entitlements. These special rules are outlined in the TFEU and in existing regulations on social security coordination,³² as interpreted and applied by the CJEU. Moreover, as noted above, Decision A2 of the Administrative Commission for the Coordination of Social Security Systems³³ and a Practical Guide developed by the European Commission³⁴ provide further guidance.

These legislative instruments and practical tools outline prerequisites and conditions that have to be met for posting to act as an exemption to the *lex loci laboris* principle, so that posted workers can keep social security coverage in the EU Member State where their employer is established (sending Member State) while working temporarily in another (receiving) Member State. These prerequisites should facilitate genuine postings and prevent fraudulent practices and thus must be verified by the sending Member State. They include the following: the temporary nature of the posting activity (i.e. up to 24 months); prior affiliation of the posted worker with the social security scheme of the sending Member State; a direct relationship between the posted worker and the sending undertaking/employer; substantial activity of the sending undertaking/employer in the Member State of its establishment; and a ban on replacement of a posted worker by another posted worker (so-called ‘chain posting’).

Decision A2 of the Administrative Commission also includes several elements and criteria that should be considered when assessing, through ex-ante procedures, whether the posting conditions/prerequisites are met. CJEU case law,³⁵ furthermore, requires the issuing institution to carry out a proper assessment of the facts relevant to the application of the rules relating to the determination of the legislation applicable in the matter of social

²⁸ Cases C-35/70 - *Manpower v Caisse primaire d'assurance maladie de Strasbourg*, EU:C:1970:120 and C-19/67 - *Soziale Verzekeringsbank v Van Der Vecht*, EU:C:1967:49. Houwerzijl M., Verschuere H., 2024, p. 192.

²⁹ Ibid.

³⁰ According to Article 13 Regulation (EEC) 3/58 a worker could stay insured in the sending Member State, for 12 months (which could be prolonged for another 12 months, if the receiving Member State agreed).

³¹ Case C-202/97 – *FTS*, EU:C:2000:75.

³² Regulation (EC) No 883/2004 on the coordination of social security systems (also referred to as Basic Regulation) and Regulation (EC) No 987/2009 of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (also referred to as Implementing Regulation).

³³ Decision No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State, (2010/C 106/02).

³⁴ European Commission (2013), Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland.

³⁵ See for example Case C-202/97, *FTS*, EU:C:2000:75.



security and, therefore, to guarantee the correctness of the information contained in the PD A1 certificate. Conversely, the receiving Member State is competent to check whether workers fulfil all the prerequisites and are not active in a shadow economy. Therefore, verification procedures are essential to enable genuine postings and prevent bogus postings.

As noted above, posting rules represent an exception to the general rule of *lex loci laboris*.³⁶ Hence, if the conditions for the application of these special posting rules are not met, cross-border labour mobility is still possible. In this case, the general rule of *lex loci laboris* would be applicable, and workers would become subject to the social security legislation of the receiving Member State. A worker would enter the receiving Member State's labour market from the outset, and the employer would have to pay social security contributions in the Member State where work is actually performed.

Dialogue

PLD participants discussed their own approach to interpreting posting as an exception to the general rule of applicability of social security legislation of the place of work, as well as the prevalence of posting in their respective country.

The discussion evolved around the question of whether posting shall be understood broadly as a separate rule, or narrowly as an exception to the general rule. Most countries participating in the PLD agreed that **a narrow interpretation of posting as an exception to the *lex loci laboris* principle is to be preferred** (e.g. AT, BE, FI, DE, ES, IT, MT, PL, PT, SI, SK), resulting in a stricter application of the existing legal framework. These participants highlighted that opening up wider or more flexible interpretations of posting would lead to uncertainties in terms of the applicable legislation, with potentially negative consequences on equal treatment of workers, social security systems, and fair competition. As such, some countries (e.g. BE, ES) noted that, while exceptions may apply in specific circumstances, in general, all posting conditions should be met before PD A1s can be issued. For example, in **Malta**, PD A1 certificates under Article 12 of Regulation (EC) 883/2004 are issued only if the posting is genuine and temporary, and if the employer is truly established and active in Malta. Should any of the posting conditions fail to be met (e.g. the employer lacks substantial activity, or the work is effectively under the receiving company's control), Malta defaults to applying the *lex loci laboris* rule.

However, the PLD also identified examples where more lenient approaches to posting rules are foreseen. In these instances, a case-by-case approach tends to be preferred, and greater leniency is applied in terms of the need to comply with individual posting conditions in specific circumstances (e.g. for shorter postings). This is to ensure a certain degree of flexibility by taking into account that individual cases are rarely straightforward and may require adaptations. In these instances, proportionality in the interpretation of posting rules is preferred, to ensure the principle of free movement of services remains the priority.

Box 1. Examples of more flexible interpretations of posting conditions

In **Norway**, PD A1 certificates tend to be issued even if not all criteria are strictly met, by using more flexible options (e.g. Article 16 Regulation (EC) 883/2004). For instance, more flexibility can be applied to shorter postings, whereas a stricter approach is applied to other criteria, such as prior affiliation. However, even in cases where narrower interpretations are preferred, a certain degree of flexibility applies: for example, where an employer posts several employees, if one of them does not meet the previous affiliation condition, but they

³⁶ See case Case C-202/97 - *FTS*, EU:C:2000:75 and case C-35/70 - *Manpower v Caisse primaire d'assurance maladie de Strasbourg*, ECLI:EU:C:1970:120.



have already planned their return to Norway, Norway's national guidance foresees the application of Article 16 Regulation (EC) 883/2004.

In **Slovenia**, the 2023 Transnational Provision of Services Act now allows employers to sign a statement under criminal responsibility where they declare to meet all posting conditions. Employers can be prosecuted if statements are not true, however this does not happen often in practice. As such, despite an overall strict interpretation of existing rules, the Act has resulted in greater flexibility in practice.

In **Finland**, ad hoc assessments are carried out in cases where only one posting condition is not met, to facilitate mobility.

3.2 Prevalence of posting and compliance with posting conditions

Participating countries represented a mix of both sending and receiving Member States. **Poland, Portugal, Slovenia and Slovakia** stood out as primarily sending countries, whereas **Austria, Belgium, Finland, France, Germany, Ireland, Italy, Malta, the Netherlands, Norway and Spain** were identified as primarily receiving countries.

Based on the data on issued PD A1s shared by PLD participants, posting represents a growing phenomenon across Europe. While in several countries (e.g. BE, DE, PL), postings primarily happen between neighbouring countries, in some other cases, posting represents a broader trend, with workers being posted from all over Europe and beyond. In some instances, moreover, bilateral agreements facilitate the movement of workers across countries (e.g. PT, SI). The Box below provides an overview of data on the prevalence of postings, as shared by PLD participants.

Box 2. Data on the prevalence of postings, as shared by the PLD participants

- ▶ In **Austria**, around 180.000 PD A1s were issued in 2024, of which about 120.000 were postings and 56.000 were multi-state activities. Austria is also one of the main receiving Member States of posted workers: in 2023, over 121.700 posted workers and 394.000 postings were reported. Around 28 % of posted workers coming to Austria were Germans, while around 16 % were represented by third country nationals (TCNs) - mostly Ukrainians.
- ▶ In **Belgium**, three out of 10 incoming posted workers are self-employed, with most of them coming from Poland, Czechia and Slovakia, and working in the construction sector. In terms of outgoing posted workers, these were around 7.000 in 2025, with Germany, Poland and France representing the main destinations due to geographical proximity.
- ▶ **Germany** is both a sending and receiving country in roughly equal numbers: there were 1.4 million postings to Germany in 2023, whereas there were 1.4 million of postings from Germany.
- ▶ **Finland** issues around 30.000 PD A1s per year. In 2025, Finland received 59.060 posted workers from EU/EEA countries. These came primarily from Germany, Poland, Estonia, Italy and Spain, and represented an increase from around 55.700 posted workers in 2024.



- ▶ In **Malta** the majority of PD A1 certificates are issued as ‘Unclassified’ under the “other” category (especially for seafarers). Only a few hundred per year represent standard postings, potentially reflecting Malta’s strict vetting process and low tolerance for artificial arrangements.
- ▶ **Norway** issues around 6.600 PD A1s certificates per year.
- ▶ In **Poland**, 853.278 PD A1 certificates were issued in 2024, of which over 180.000 were under Article 12(1) Regulation (EC) 883/2004, while over 240.000 were issued under Article 13(1) Regulation (EC) 883/2004 (multi-state activities). Most PD A1s are issued to employees, with only around 100.000 requested by self-employed persons (particularly for multi-state activities).
- ▶ In **Portugal**, the labour inspectorate received 22.308 posting notifications of workers posted to another country in 2024. Around 107 destinations were recorded, including countries in Africa and Latin America, although most workers are posted to France, Spain, and Belgium. The construction sector is also over-represented among workers posted from Portugal. In terms of incoming postings, in 2024, Portugal received 8.000 posting notifications from other countries (mostly Spain, Romania, and Germany). Most of these individuals work in the transformation industry, as well as in the information and communication sector..
- ▶ In **Slovenia**, most posted workers travel to Austria, Germany and Belgium. Moreover, Slovenia has a bilateral agreement with Bosnia-Herzegovina (BH) and Serbia to facilitate the movement of workers (i.e. allowing BH and Serbian workers to work in Slovenia and be posted).
- ▶ In **Slovakia**, the Social Insurance Agency issued 24.000 PD A1 forms in 2024, of which 13.000 were under Article 13 Regulation (EC) 883/2004 (multi-state activities).
- ▶ In **Spain**, there were 211.209 PD A1s issued under Article 12 and 94.711 under Article 13 in 2024.

Furthermore, feedback gathered through the PLDs highlighted that, while statistics on the number of issued PD A1s are generally available, data on rejected PD A1 applications is not systematically collected. This tends to represent an even greater challenge for decentralised countries (e.g. IT), where data and statistics are primarily collected by authorities operating at the regional or local level. Even when data on rejected PD A1s is available, it does not provide the necessary granularity to identify the grounds for rejection (i.e. whether the rejection was due to bogus posting or other grounds). Nevertheless, qualitative feedback shared by PLD participants indicates that the most recurring grounds for rejecting PD A1 applications include incomplete or inadequate documentation (e.g. lack of a clear employment contract or service agreement, and suspicions of fictitious self-employment), as well as significant tax debts, insufficient evidence of business activity in the sending State or a mismatch between the work performed in the sending country and the work to be performed abroad.

Compliance with all posting conditions remains difficult to verify, due to several factors. For instance, the first barrier to ex-ante verification processes is represented by the often **high number of applications** to be processed posing a challenge to ex-ante verification. For example, in several countries such as Germany, Italy and Poland, which issue the most PD A1 certificates per year, the large number of applications to be processed makes it impossible to carry out specific checks to ensure compliance with all posting criteria.

Moreover, the current **lack of data sharing/non-interoperability of systems and databases**, makes it particularly difficult to carry out thorough checks. Verifying compliance with all posting conditions would require cross-checking different databases managed by different public authorities (e.g. social security institutions, tax offices, labour inspectorates) within the same country. However, these systems are often not accessible across institutions. For example, in **Finland** limited interoperability across national systems and databases, or even the existence of data protection laws, can act as an obstacle to information sharing between institutions within the country. Similarly, in **Poland**, gaps in IT connectivity between databases managed by the tax and social security



authorities makes it very difficult to verify the significance of economic activity as one of the posting conditions. **Malta** stands out as an exception as all PD A1 applications undergo robust pre-checks and data sharing between the Department of Industrial and Employment Relations (DIER), Jobsplus, and the Commissioner for Revenue, as fraud prevention remains the cornerstone of Malta's approach. To counter the current lack of interoperable systems to support data sharing, some PLD countries (e.g. MT, NL, SK) noted that cooperation is sought through other informal (e.g. reaching out to colleagues in other institutions via email or phone) and formal (e.g. official letters of request from one institution to another). However, these approaches are often ineffective as they either rely upon personal contacts or result increased red tape and bureaucratic hurdles.

Lastly, the **uneven take-up of digital tools** in some European countries represents an additional barrier to ex-ante verification. This was, for example, the case for Slovakia, where the digitalisation of institutional systems and databases is still lagging behind, further slowing down and complicating the identification of relevant information to verify posting conditions.

3.3 Distinguishing between posting and multi-state activities

Introduction

While posted workers are often in the limelight, multi-state activities, also known as pluriactivities, alternating or simultaneous activities, represent another exception to the *lex loci laboris* rule.³⁷ **As the distinction between posting and multi-state activities is not always clear, employers may attempt to avoid stricter posting rules by performing pluriactivities instead.**³⁸

Posting of workers and multi-state activities are covered by Regulation (EC) 883/2004 on the coordination of social security systems. Article 12 of the Regulation contains special rules for postings, including a series of conditions to be fulfilled to post workers to another Member State. For example, a worker must pursue an activity in a sending Member State and must be sent to another Member State on behalf of an employer that normally carries out its activities in the sending Member State. Moreover, a worker must be covered by the social security system of the sending Member State before the posting takes place for the same legislation to continue to be applicable. Furthermore, the anticipated duration of the posting should not exceed 24 months, and posted workers should not be sent to the receiving country only to replace another posted worker, as the temporal nature of the posting would be lost.

Article 13 of the same Regulation tackles simultaneous work in two or more Member States for one or more employers (i.e. multi-state activities). The article establishes rules for instances in which a person normally, habitually or regularly performs certain professional activities in two or more Member States³⁹ (e.g. this is

³⁷ Simultaneous activities might not be the best description, since no one can work in two Member States in exact same time. Jorens, Y.: Cross-border EU Employment and its Enforcement, An Analysis for the Labour and Social Security Law Aspects and a Quest for Solutions, Springer, 2022, p. 327.

³⁸ For instant, in Poland the number of PDA1 certificated for posting rose only slightly (221.126 in 2010 to 267.225 in 2023), whereas PDA1s for multi-state activities increased drastically (from 44.018 in 2010 to 568.068 in 2023). In Slovenia the number of PDA1 certificated for postings dropped from 163.876 in 2017 to 85.999 in 2018 (98.469 in 2023). At the same time, there were 406 PDA1 certificated for multi-state activities issued in 2015 and 13.132 in 2016 (76.681 in 2023) due to new legislation (announcement and adoption) regulating postings but not multi-state activities, today both are regulated by the new Act on Cross-border Provision of Services (*Zakon o čezmejnem izvajanju storitev, ZČmIS-1*, Official Gazette RS No. 40/2023). See also De Wispelaere, F and Vukorepa, I.: The EU Social Security rules on posting: defining problems and potential solutions, in: Pennings, F. and Vonk, G. (ed), Research Handbook on European Social Security Law, Edward Elgar 2023, p.237.

³⁹ Article 14(5a) Regulation (EC) 987/2009. Marginal activities should not be considered. The Guide of the Administrative Commission states that a marginal activity is performed during less of the 5% of the normal working time and for a salary that supposes less than the 5% of the ordinary remuneration



particularly relevant for so-called highly mobile workers such as seasonal workers⁴⁰ and road transport workers,⁴¹ who cannot always be considered posted workers⁴² and even if so, fall under specific legislation (i.e. posting Directive (EU) 2020/1057⁴³). The performance of multi-state activities must be predictable and carried out on a permanent basis over the following 12 calendar months.

Both articles stand as exceptions to the *lex loci laboris* principle to ensure that a single social security system is applicable. ‘Normally’ is the key word for both exceptions (i.e. posting and multi-state activities): for postings, an employer must normally carry out its activities in the sending Member State; while for multi-state activities, these must be normally pursued by the worker in two or more Member States.

Multi-state activities must be predictable in nature, on the basis of a repeated format over the succeeding 12 calendar months. Hence, not only can a person work three out of five days a week in one country and two in another, but it is also possible to work 10 months in one Member State and two in another. In the latter case, the distinction between multi-state activities and posting may not be self-evident.

There is no hierarchy between the rules of posting and the rules on multi-state activities, which address different situations. For example, in the case of posting, an employer must perform significant activities in the sending country, which is not required for multi-state activities.⁴⁴ This and other differences (e.g., longer validity of PD A1 forms in case of multi-state activities) may in practice motivate businesses/companies to prefer one instrument over another and apply for the regime that suits them better. Moreover, **for multi-state activities, both (or all) Member States remain competent to classify the activity on their territory** (whereas for posting, the receiving Member State cannot classify the activity on its territory).⁴⁵ In multi-state activities, there has to be a regular, normal work pattern,⁴⁶ which might not be possible in posting. Similarly to posting, where the *anticipated* period should not exceed two years, multi-state activities should take place in the following 12 calendar months.⁴⁷ However, there is neither a time limit to multi-state activities nor is it illegal to replace a worker involved in multi-state activities as it is for posting.

Further, **in the case of multi-state activities, there is no sending Member State that is competent for social security coverage**, as workers fall under the social security system of the country of residence if substantial activities are performed there.⁴⁸ The latter generally corresponds to an overall share of at least 25% of working time and/or remuneration,⁴⁹ with some exceptions in the case of telework. The latter is currently regulated by the Multilateral Framework agreement on the application of Article 16 (1) of Regulation (EC) 883/2004 in cases of habitual cross-border telework (Framework agreement),⁵⁰ which states that teleworking from a residence Member

⁴⁰ See Carrascosa Bermejo, D. and Contreras Hernandez, O., Posted workers from and to Spain facts and figures, Leuven, Posting stat, p. 23.

⁴¹ Both the number of postings and the number of posted workers strongly declined. From 2022 to 2023, the number of reported postings decreased by 22%. Especially Austria, Malta, and Finland show a large decrease, namely more than -40%.. De Wispelaere F., De Smedt, L., Pacolet J, 2025, p. 26.

⁴² See also case C-16/18 *Dobersberger* EU:C:2019:1110.

⁴³ Directive (EU) 2020/1057 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, OJ L 249, 31.7.2020.

⁴⁴ Extensively Jorens, Y., 2022, p. 331.

⁴⁵ Distinctive classifications (whether work or no work, what kind of work, employment or self-employment) cause difficulties in social security coordination. Strban G., 2021, p. 337.

⁴⁶ Practical Guide, 2013, p. 25 mentions that ‘some regularity in the activity is required’ for a multi-state activity.

⁴⁷ Article 14(10) Regulation (EC) 987/2009.

⁴⁸ If there are no substantial activities in the Member State of residence the Member State of employer or again residence may be the competent one. See Article 13 Regulation (EC) 883/2004.

⁴⁹ Article 14(8) Regulation (EC) 987/2009. CJEU argued that, there is no need to take into account other circumstances or criteria than working time and/or remuneration (C-203/24 *Hakamp*, EU:C:2025:662). Moreover, the Court argued that working time in third countries has to be taken into account when determining the amount of activity in the residence Member State (C-743/23 *Moguntia*, EU:C:2025:954). See also RZS, Telework Framework Agreement & Working in a Third Country, 16.2.2026.

⁵⁰ It is applicable as of the 1st of July 2023, when it was signed by 22 EU and EFTA Member States. However, it seems that not all Member States have an intention to sign it. For instance, Denmark has decided not to sign it, since they consider the Regulation rules to be effective and already have a similar special agreement with Sweden. and Pihl M.L., Brink C., Denmark – EU Social Security Framework Agreement on Telework Declined, GMS Flash Alert 2023-210.



State must represent less than 50% of the entire working time in the Member State of residence. Agreements on the applicable legislation last for three years, but may be renewed without any time limit, as long as a new request is presented. Hence, it may become a timeless new social security coordination rule for multi-state activities.

Whether the *lex loci laboris* principle or one of its exemptions applies, it is a decision that should be based on the analysis of the facts of the case at hand. However, given the existing similarities between the posting of workers and multi-state activities, the approach is not clear-cut, enabling potential overlaps or the misuse of existing social security coordination rules.

Dialogue

The PLDs highlighted an **uneven pattern across Europe in terms of the use of multi-state activities** as an exception to the *lex loci laboris* principle. Feedback from the PLDs showed that multi-state activities represent a new challenge for several countries (e.g. IT, FR, NL), as the number of PD A1 requests under Article 13 of Regulation (EC) 883/2004 has been progressively increasing over the years, likely due to the higher level of flexibility offered by this regime. Conversely, in other countries, multi-state activities remain a new phenomenon, with requests remaining relatively low as this type of posting is not yet particularly known among businesses and workers (e.g. IE, SI).

Regardless of the prevalence of multi-state activities, there was a general consensus among countries participating in the PLD that **distinguishing between postings and multi-state activities remains challenging**, both due to the similarities between the two and differing approaches to their assessment and definition across countries. For example, practices shared by PLD participants indicate that PD A1 requests for posting under Article 12 of Regulation (EC) 883/2004 tend to be subjected to a higher level of scrutiny through ex-ante verification processes. On the other hand, PD A1 requests under Article 13 of the same Regulation (i.e. multi-state activities) are often only checked ex-post, in case irregularities are identified. This was, for example, the experience shared by **Belgium** and **Spain**, where the issuing of PD A1 for posting is automated with certain limited checks being done ex-ante (in the case of Spain), whereas for PD A1s to be issued for multi-state activities, authorities primarily rely on the applicant's declaration that all conditions are met, with checks only carried out ex-post on a needs-based approach.

Box 3. Assessing telework

Under Social Security Coordination Regulations, the country where a worker is insured is primarily dictated by where the work is performed. In the context of cross-border employment, **telework can potentially lead to a change in the state of insurance**. In the case of telework, the verification of where work actually takes place could be carried out in two steps. The first step would be to inspect employers, who must ensure occupational health and safety for teleworkers. The second step would be inspecting the teleworkers themselves (those who have already opened their domestic place of work to their employer), either on the spot or remotely, depending on the nature of the activity.

As of 2023, the [EU Framework Agreement on Cross-Border Telework](#) is in place. It includes rules indicating the applicable social security system, depending on the share of working time during which the employee works remotely. In addition, some countries (e.g. AT) have set up bilateral agreements on telework with other Member States. Despite the existence of these frameworks, identifying where work takes place in the case of telework remains challenging.

Most represented countries (e.g. DE, IT, PL) noted that inspections cannot be carried out at the home of a teleworker, unless their explicit permission is obtained. **Slovakia** stands out as the only country represented in the PLDs where it is legally possible to carry out inspections inside the home of a teleworker. However, this is



rarely done in practice. The possibility of carrying out “remote inspections” (i.e. online) to avoid physically entering the teleworker’s premises was put forward as a potential solution. However, this would remain difficult to implement in practice, as work contracts would need to explicitly mention the worker’s home as an official place of work. For instance, **Austria** is not only part of a Framework agreement on EU cross-border telework but has also set up bilateral agreements on telework with Germany and Luxembourg.

To tackle uncertainties in assessing whether instances of postings should be regulated under Article 12 or 13 of Regulation (EC) 883/2004, **some countries have come up with their own approach to draw the distinction between postings and multi-state activities**, beyond what is foreseen in existing legal frameworks (e.g. AT, DE, MT, NL). In some instances, distinctions rely on assessing the nature of the activity to be carried out (i.e. the content of the work to be performed) or its repetition over time and across countries (i.e. whether the same work is performed on multiple occasions and in different Member States). For example, **Austria’s** social security institutions focus on the content of the employment contract to assess whether Article 12 or Article 13 Regulation (EC) 883/2004 applies: if the activity is the same every year and there is a recognisable pattern, rules regulating multi-state activities apply. In **Germany**, multistate activities are defined as instances where workers work one day every month or at least five days over three months in another country. In **the Netherlands**, particular attention is paid to the nature of the activity as a key indicator of whether Article 12 or 13 applies, with rules on multi-state activities being relied upon in instances where the activity to be performed remains the same across countries. Lastly, **Malta** focuses on work patterns analysis. If a worker performs temporary, project-based work abroad under Maltese direction, this is interpreted as an instance of posting. On the contrary, if the worker routinely splits their working time between countries, rules on multi-state activities apply.

However, regardless of individual countries’ own approaches to identifying differences between mobility under Article 12 and under Article 13, **different interpretations of what constitutes posting and multi-state activities across countries remains a challenge**. In addition, PLD participants underlined that some conditions that prove particularly problematic to assess include verifying where substantial activities take place. According to existing legal frameworks, remuneration and working time need to be taken into account,⁵¹ however these are said to be difficult to check in practice.

Participants discussed whether regular, short business trips abroad would require a PD A1 certificate and, if so, whether this should be issued under Article 12 or Article 13 of Regulation (EC) 883/2004. Approaches across countries tend to differ, with no identifiable trend. For instance, in **Finland**, regular business trips are generally interpreted as falling under Article 13, with ex-ante checks primarily focusing on verifying that substantial activities take place in Finland. In **Norway**, a pragmatic approach is prioritised, whereby institutions assess the advantages of using either Article 12 or 13, depending on the specific circumstances of each case. For example, if the worker is already aware that they will need to work abroad a certain number of times per year, institutions generally prefer to directly issue a PD A1 under Article 13 covering the whole year (i.e. avoiding having to issue consecutive posting certificates under Art. 12). However, based on Norway’s own national guidance, in less clear-cut cases where both articles could potentially apply, Article 12 remains the preferred option.

Box 4. The concept of ‘home base’ and challenges to its interpretation

PLD participants discussed the legal status of flight crews, focusing on a case involving Ryanair as the starting point for this discussion. Ryanair, despite having its physical offices in Belgium, was legally based in Ireland and used to consider all of its pilots as self-employed. In 2017, it was established that the ‘home base’ is the most significant indicator of a crew member’s workplace, and that pilots are employees of Ryanair. While

⁵¹ According to the recent Hakamp judgement, only these two factors are taken into account (C-203/24 *Hakamp*, EU:C:2025:662).



innovative, the introduction of the ‘home base’ concept has not solved all issues related to identifying the competent social security institution. For example, **Finland** noted that, if a crew member has several home bases, Article 13 should apply. However, home bases are not always clearly defined in labour contracts, posing further challenges to the identification of the applicable legislation. **Norway** also highlighted that, while in theory the implementation of the home base rule should be relatively intuitive, airlines themselves are generally free to define their home base, and therefore de facto choose the Member State for social security coverage.

Beyond these examples, the PLD highlighted that approaches to business trips are relatively lenient, as participants underlined the importance of allowing for a certain degree of flexibility to avoid putting social security institutions under unnecessary strain. As such, the majority of participants agreed that, in cases where workers only spend a few days abroad, the exception of the marginal work rule under the Practical Guide should apply (if the business trip represents less than 5% of the total work, PD A1 should not be needed). However, a minority of countries (e.g. DE, PL, PT) opted for a stricter approach, requiring the issuing of PD A1s even for short work trips. For example, in **Portugal**, notifications to the labour inspectorate are required for all business trips, regardless of the length (e.g. even in cases of a one-day trip, as no exceptions are made for short trips). Additionally, **Germany** and **Poland** pointed out that PD A1s may be required even for short business trips. For **Germany**, however, the Federal Pension Fund advises against requesting a PD A1 if the business trip is shorter than a week, to reduce administrative burdens.

Key take-aways: posting as one of the exceptions to the general *lex loci laboris* rule

- ▶ Posting is a popular tool for cross border labour mobility providing services in the EU/EEA. As such, it should generally be perceived as a strict exception to the *lex loci laboris* principle. It should never be a loophole for unfair advantages in the internal market; as it is a narrowly defined option granted only when all EU legal criteria are met. On a case-by-case basis, more lenient approach towards some of the posting conditions could be taken, particularly where Decision A2 stipulates so.
- ▶ Sending and receiving countries still face challenges concerning conditions for genuine postings in order to verify its legitimacy. Among them is lack of data/non-interoperability of systems and databases (including the number and reasons for rejected posting), which makes it difficult to control postings.
- ▶ Another challenge is the different interpretations of what constitutes posting and multi-state activities. A key distinction is foreseen behaviour (prediction) for the following 12 months. If there is a pattern, multi-state activities rules may apply. If there is no such weekly, monthly or yearly pattern, posting rules are more likely to be applied. Difficulties with establishing substantial activities remain (substantial activity of the posting employer in the State of establishment and substantial activity of the worker in the State of residence in case of multi-state activity).
- ▶ Countries apply various criteria for short business trips. Also, cross-border telework remains a challenge, more so after the decision of the CJEU requiring activities also in third countries to be considered. Flight crew rules could be perceived as a solution to determine a centre of (business) interest, but they have their own flaws built in.
- ▶ Marginal cross-border activities might be disregarded, not to overstrain the national social security administrations.



4.0 Exploring posting conditions and implementation challenges for workers

4.1 Pursuing an employed or self-employed activity

Introduction

When assessing posting conditions, a key starting point is determining who can be posted. Both employed and self-employed workers may be posted, but the responsibility for classifying activities as employed or self-employed rests with national authorities. **Defining employed workers** tends to be less ambiguous, as the Social Security Coordination Regulations defer to national legislation to avoid harmonising rather than merely coordinating social security systems. In some countries, national definitions require individuals to meet specific thresholds – e.g. a minimum earnings or hours worked – to qualify as employed workers.

Specific conditions apply to posted self-employed workers, who still represent a minority of all postings⁵², with most taking place in the construction sector.⁵³ Before their posting, posted self-employed workers must habitually carry out substantial self-employed activities in the sending Member State⁵⁴ and maintain all national requirements for operating their business in that country throughout the posting period, such as maintaining an office space, paying taxes, holding a professional card or a VAT number, or being registered with chambers of commerce or relevant professional bodies⁵⁵.

Self-employed workers must also be insured under their home Member State's social security system for a certain period before posting. In practice, this means working as self-employed for at least two months before posting, with shorter periods requiring a case-by-case assessment.⁵⁶ During the posting period, self-employed workers must also maintain their business infrastructure in their home country to demonstrate their readiness to resume their professional activity in the sending Member State upon return.

Another posting condition is that self-employed workers carry out **a similar activity in the receiving Member State**. This requires that the nature of the work to be performed is determined in advance and can be evidenced, for example, through contracts detailing the tasks. When a person performs self-employed activities in the same sector across countries, this is generally regarded as similar activity. However, roles within a single sector can vary significantly, meaning this principle may not always apply straightforwardly.⁵⁷ Each Member State defines employed and self-employed activities for its own territory. As a general rule, the classification of the sending

⁵² On average 5.1 % of the persons covered by Article 12 were self-employed in 2024. In Slovakia in particular, the number of PDs A1 granted to posted self-employed persons increased sharply between 2015 (28 456 PDs A1) and 2024 (49 789 PDs A1). As a result, the percentage share of PDs A1 granted to posted self-employed persons in the total number of PDs A1 granted by Slovakia rose significantly (from 35.7% in 2015 to 53.8% in 2025). De Wispelaere F., De Smedt, L., Pacolet J, 2025, p. 14. In Belgium, 13 % of incoming posted persons and 20 % of notifications concerned incoming self-employed persons in 2022. This is similar to the situation in 2021 and 2020. In Denmark, 6 % of the incoming posted persons are self-employed. However, 13 % of the postings and 30 % of the declarations involve incoming self-employed persons. These shares are also comparable to those of 2021 and 2020. Finally, around 22 % of the notifications made in the prior declaration tool from the Netherlands were from self-employed persons in 2022. De Wispelaere F., De Smedt, L., Pacolet J, 2024, p. 26.

⁵³ In the construction sector some 28 % of the persons providing services in the Belgian construction sector were self-employed and 11 % in the Danish construction sector. Consequently, the share of posted self-employed persons in the construction sector is significantly higher for Belgium (28 % vs 13%) and Denmark (11 % vs 6 %) compared to the overall share of posted self-employed persons. Ibid.

⁵⁴ Article 14(3) Regulation (EC) 987/2009.

⁵⁵ Point 2 Administrative Commission Decision No A2.

⁵⁶ Ibid.

⁵⁷ Posting Guide, 2013, p. 15.



Member State must also be respected in the receiving Member State, as the focus remains on the actual nature of the activity, rather than how it is classified by other countries under their social security legislation⁵⁸.

Unlike employed workers, self-employed workers are not currently subject to a prohibition on replacement. As a result, self-employed posted workers could potentially replace both other posted self-employed workers or employees whose posting has ended. This distinction is now under scrutiny, and proposals have been made to amend Social Security Coordination Regulations to introduce a similar replacement prohibition that would prevent posted self-employed workers from replacing another posted employed or self-employed person.⁵⁹

Dialogue

Across participating countries, feedback from PLD participants highlighted that cases involving posted self-employed workers remain challenging to assess, particularly when national definitions of employed and self-employed status differ. As receiving countries must rely on the classification applied by the sending Member State, inconsistencies in national criteria can create uncertainty and room for dubious cases.

Examples from several countries illustrate this variability. In **Germany**, self-employed workers are not required to be insured under the German social security system before posting, as they may rely exclusively on private insurance. As a result, for posting purposes, verification focuses primarily on establishing residency in Germany and confirming that individuals are subject to German legislation. **Malta**, by contrast, applies a clear distinction between employed and self-employed workers. According to this definition, employed persons must have a registered employment contract with Jobsplus and pay Class 1 contributions, while self-employed persons must hold a VAT number, file tax returns, and pay Class 2 contributions for at least two months before posting. Based on this clear definition, Malta's Department of Social Security conducts the necessary checks on habitual and substantial self-employment, for example, through checking invoices, office premises, and previous work. **Italy** emphasised that, to assess whether an individual is employed or self-employed, contractual arrangements, service agreements, tax and business registration data, and the individual's habitual residence or main place of economic activity are scrutinised. This assessment can become complex when there is no clear link to an employer or when activities are irregular or cross-border. Furthermore, in **Slovenia**, it is possible to check at any time whether a business entity is legally registered, via data in the Business Register of Slovenia, which is publicly available, or through the IMI system.

Given these complexities, many countries rely heavily on the information indicated in PD A1 applications, while deploying different systems to carry out checks as needed. In some countries, social insurance institutions have direct access to registers that allow cross-checking worker information against what has been declared in their PD A1 application. **Norway** introduced such a register in 2015, enabling public authorities to access information on all employees hired by a given employer, as well as their monthly salaries. **Finland** confirms an individual's status through pension insurance records. In **Spain**, employment or self-employment status is determined upon registration in the social security system, which in itself may be subject to inspection in order to confirm that the registration as employee or self-employed is correct). In addition to this, the classification is generally not questioned when issuing PD A1s, unless concerns about the legal status of a posted worker are raised by virtue of claims, inspections in Spain or initiatives of the receiving country. In such cases, the labour inspectorate may review the case and, where appropriate, request the social security institution to reclassify the worker as self-employed.

⁵⁸ Article 14(4) Regulation (EC) 987/2009. See case C-178/97 *Banks and Others*, ECLI:EU:C:2000:169. It concerned British artists resident in the UK who were insured as self-employed under the British Social Security law and who were employed for several months by a Belgian theatre which hired them as employees and sought to insure and deduct amounts from their salary for the payment of the appropriate contributions under the Belgian Social Security law on the understanding that there was no posting.

⁵⁹ Proposal to amend Social Security Coordination Regulations (including Article 12(2) Regulation (EC) 883/2004), COM(2016) 815 final, Strasbourg, 13.12.2016.



Coordination with tax authorities is another method used to validate worker status as employed or self-employed. In **Ireland** and **Norway**, for example, social institutions regularly reach out to tax authorities for (additional) background checks. Another option is applying checklists.

Across participating countries, a recurring trend was the misuse or questionable use of self-employment in the context of posting. Authorities frequently encounter situations where individuals formally registered as self-employed do not demonstrate the autonomy or business structure typically associated with genuine self-employment. These issues arise both in the posting context and within national labour markets more broadly.

Several country examples illustrate how these patterns manifest. For example, **the Netherlands** reported numerous cases of posted self-employed persons who, in practice, work exclusively for a single company in the country. When such cases are detected, the social security institution tends to raise the issue with the corresponding institution in the sending country to carry out the relevant checks. However, resolving these cases remains difficult, and corrective actions can take years even when violations of posting rules are detected. **Malta** addresses potential misuses by reviewing contribution records in its national database: regular payment of Class 2 contributions is essential for recognising self-employment. If an individual has never been active in Malta or was insured only for a brief period, the PD A1 application may be rejected to avoid “instant” posting of individuals recruited abroad merely to exploit their Maltese affiliation. At the same time, some countries (e.g. DE) observed that misuse of self-employment is not limited to posting, as similar practices also occur domestically, with workers registered as self-employed effectively work for a single local company.

Box 5. Verifying employee or self-employed status

In **Portugal**, pursuant the Labour Code, the labour inspectorate applies a set of indicators to determine whether a worker should be considered an employee. This includes, inter alia, verifying that the equipment used belongs to the beneficiaries of the activities, that the work is managed by the employer, and whether regular payments are made to the worker for their services. If the labour inspectorate concludes that a worker previously classified as self-employed should instead be considered an employee, the employer is notified to correct the situation within ten working days, or submit an appropriate statement.. If the employer does not recognise the existence of an employment contract, the inspector, within five working days, reports the case to the public prosecutor’s office.

Procedures to determine whether an applicant should be classified as an employed or self-employed worker also show consistent trends. Sending Member States typically rely on the information provided in the PD A1 application form, complemented by checks against national databases (e.g. salary information, contract start dates, insurance records). However, the large volume of applications complicates systematic verification. Receiving countries, for their part, tend to accept the classification assigned by the sending State. When concerns arise, these are communicated back to the sending State for review and, where necessary, reclassification. **Slovenia** follows this approach. While trusting the sending State’s qualification for social security purposes, its labour inspectorates independently apply national labour law to determine whether a posted worker is an employee or self-employed. This classification does not affect the posting as such, but it does have an impact on the working conditions the individual is entitled to (e.g. minimum wage, working time, occupational health and safety regulations). This is considered important given the frequency of cases where foreign companies post their workers to Slovenia as self-employed even though they meet the criteria to be classified as employees.

Linked to the Slovenian examples, differences in national definitions of employed and self-employed workers under social security legislation and labour law provisions further complicate coordination between social security institutions and labour inspectorates. **Norway** highlighted how divergent definitions make joint assessments challenging. Recent reforms have attempted to address this by shifting the burden of proof onto the company and



the worker: where there is a doubt on the nature of the work (i.e. employed vs self-employed), it is up to the individual or the company to demonstrate the correct legal status. This change improves opportunities for cooperation between social security institutions and labour inspectorates and strengthens enforcement possibilities.

4.2 Prior social security coverage in the sending Member State

Introduction

Posted workers continue to be covered by the social security system of the sending Member State. As such, existing EU-level regulatory frameworks on social security coordination require workers to already be covered by social security rules in the sending country before their posting⁶⁰ and to maintain such coverage during the entire posting period.⁶¹

As outlined in Decision A2 of the Administrative Commission for the Coordination of Social Security Systems⁶², it is sufficient for a worker to be covered by the social security of a sending Member State for at least one month before the posting. Shorter periods of prior insurance might still be possible but must be evaluated on a case-by-case basis.

However, there is no requirement for workers to be insured as employees of the sending employer. A worker can be covered by the social security system of a sending Member State in another capacity, e.g. as a resident⁶³ or as a family member, or a pensioner,⁶⁴ as long as there is a sufficient link between the posted worker and the sending Member State's social scheme.

Dialogue

Participating Member States reported no major difficulties in verifying prior insurance periods in their respective countries, with PLD participants underlining that whether workers are registered under the national social security system can be verified prior to posting relatively easily.

4.3 Time limit in the receiving Member State

Introduction

Temporal limitations to postings are set up to respect the principle of free provision of services in the internal market without entering the receiving Member State's labour market, while also safeguarding the connection between the worker and the sending Member State's social security system. This is based on the understanding that the longer the provision of services in the receiving country, the more the worker is integrated into its labour market and the genuine link to the sending Member State fades away.⁶⁵ Moreover, the longer the

⁶⁰ Article 12(1) Regulation (EC) 883/2004 and Article 14(1) Regulation (EC) 987/2009.

⁶¹ Case C-202/97 *FTS*, EU:C:2000:75.

⁶² Decision No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State, (2010/C 106/02).

⁶³ See case C-451/17 – *Walltopia*, EU:C:2018:861, where CJEU argued that employee recruited with a view to being posted to another Member State must be regarded as having been already subject to the legislation of the sending Member State, even if that employee was not an insured person under the legislation of that Member State immediately before the start of his employment, if, at that time, that employee had his residence in that Member State, which is for the referring court to ascertain.

⁶⁴ Some examples in the Posting Guide, 2013, p. 11.

⁶⁵ See case C-49/98 – *Finalarte and Others*, EU:C:2001:564, where CJEU argued that workers employed by a business established in one Member State who are temporarily sent to another Member State to provide services do not, in any way, seek access to the labour market in that second State if they return to their country of origin or residence after completion of their work.



posting, the likelier it becomes that the worker's professional centre of interests shifts. To this end, existing rules state that the anticipated duration of posting should not exceed 24 months.⁶⁶ When it is anticipated from the outset that work in the receiving Member State will last longer, posting conditions are not met, not even for the first 24 months.

Interruptions within this 24-month period are possible. For example, should the posted worker not be able to complete the work due to unforeseen circumstances, an extension (up to 24 months in total) may be requested by the employer until the completion of such work. Such requests must be submitted and substantiated before the end of the initial posting period.⁶⁷ However, brief interruptions of the worker's activities, whatever the reason (e.g., holidays, illness, training), do not impact the posting period.⁶⁸

Under social security law, posting has always been limited in time (e.g. under the initial Social Security Regulations, it was 12 months plus another 12 months if the receiving country agreed to the extension).⁶⁹ Under the current Social Security Regulations, as a rule, the 24 months cannot be prolonged. To extend a posting period past 24 months, Member States must apply the flexibility clause under Article 16 of Regulation (EC) 883/2004. Lastly, existing rules establish a two-month 'cooling period' before a worker can be posted again once his previous posting is completed.

Dialogue

PLD participants discussed the duration of postings and possible misuses or more flexible interpretations of existing rules at length. In some countries, the duration of postings does not represent a challenge as postings generally tend to be short. This was, for example, the case for **Austria**, where, on average, postings last around four months, with workplace checks carried out by relevant authorities (e.g. FinPol) to verify that the postings do not exceed the declared length. Other countries, however, implement stricter approaches to monitoring the duration of postings, to discourage misuses (e.g. chain postings) or ensure extensions are allowed only as an exception. For example, in **Malta** postings are capped at 24 months, with extensions under Article 16 of Regulation (EC) 883/2004 granted only in justified cases to be agreed with the receiving State. Moreover, should a new posting begin within two months of the previous one, the Maltese Department of Social Security may treat it as a chain posting and deny the issuing of a new PD A1 certificate, demonstrating a strict approach to chain postings. Similarly, in **Italy**, postings exceeding 24 months are treated as an exception. All previously completed periods of posting, including those completed under previous EU regulations, are included to calculate the total posting duration under Regulation (EC) No 883/2004. Should the length exceed 24 months, the employer must formally request an extension, and Italy, as the other Member State involved, must agree to the extension for the social security system of the posting Member State to continue to apply, according to the flexibility clause of Article 16 of Regulation (EC) 883/2004.

4.4 Limited replacement options

Introduction

In theory, the 24-month limit could be avoided by replacing a returning posted worker with another one. To avoid such practices, existing rules state that **posted workers cannot be sent to replace another posted person (i.e. prohibition of 'chain posting')**.⁷⁰ From the employer's and a receiving company's point of view (permanently)

⁶⁶ Article 12(1) Regulation (EC) 883/2004.

⁶⁷ Posting Guide, 2013, p. 17.

⁶⁸ Point 3(b) Decision A2.

⁶⁹ Regulation (EEC) 3/58. See also Articles 14(1) and 14a(1) Regulation (EEC) 1408/71, as amended.

⁷⁰ Article 12(1) Regulation (EC) 883/2004.



replacing posted workers for the same work is not allowed. At the same time, for a posted worker a two months “cooling off period” applies before new posting of such worker is possible.⁷¹

In practice, verifying compliance with this posting condition remains challenging. For instances, it remains unclear whether minor adjustments to a job description for a newly posted worker are sufficient to meet requirements under existing rules, or whether the prohibition to replace posted workers with another posted person only applies to postings from the same employer or from the same sending Member State. CJEU case law clarifies that replacing posted workers is not possible under any circumstances, regardless of the employer or the sending country (i.e. it should not be possible to replace posted workers even if the employers or the sending countries are different).⁷²

Nonetheless, gaps remain. Notably, there is currently no formal prohibition preventing a posted self-employed worker from replacing a posted employee. The Social Security Coordination Regulation simply states that ‘a *posted worker cannot be sent to replace another posted person*’, without specifying how this applies to situations involving self-employed individuals. It therefore remains uncertain whether such a replacement would be permissible within the 24-month posting period or whether a strict interpretation of Article 12 of Regulation (EC) No 883/2004 should prevail.⁷³

Dialogue

Based on the experience of the countries participating in the PLD, the use of some sort of consecutive (chain) postings remains commonplace. This seems to be the case in **the Netherlands** where the number of posted workers is increasing, with many companies sending workers for a period of two years, followed by a cooling off period of two months, for the posting to then commence again for another two-year period. While not strictly illegal, this type of cases teeters the line between legal and bogus posting.

Key take-aways: posting conditions for workers

- ▶ Posting of employed workers presents most postings compared to self-employed workers. Nevertheless, the status of a self-employed worker, nationally and in the framework of posting, can at times be dubious. The definition from a sending country must be respected, but establishing substantive and similar activities might be challenging.
- ▶ Public institutions such as social security institutions and labour inspectorates do not always have access to all available information, including tax and business registries. This affects the extent to which thorough checks can be carried out.
- ▶ Close cooperation between sending and receiving countries is crucial, although the level of cooperation varies and some countries tend to be less responsive than others.
- ▶ Social security coverage prior to posting does not present an issue, also due to social security registries being thoroughly checked by the relevant authorities when issuing PD A1s. Duration of postings seems to present no major issue, and countries may agree on prolonged postings using the flexibility clause of Article 16 Regulation (EC) 883/2004.

⁷¹ According to Point 3 (c) Decision A2 ‘once a worker has ended a period of posting, no fresh period of posting for the same worker, the same under takings and the same Member State can be authorised until at least two months have elapsed from the date of expiry of the previous posting period.’

⁷² Case C-527/16 - *Alpenrind and Others*, EU:C:2018:669. Also Jorens Y., 2022, p. 315.

⁷³ According to the Proposal for a Regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 - Analysis of the final compromise text with a view to agreement, Brussels, 23 April 2026, no chain posting with either employed or self-employed workers would be permissible.



- Replacement ban is in place to prevent chain posting and permanent performance of activities in the receiving country. However, periods between two postings might need to be revised as continuous postings with only short breaks in between seem common in several countries.

5.0 Exploring posting conditions and implementation challenges for employers

5.1 Substantial activity in the sending Member State

Introduction

An employer sending a worker to another country must show a real connection to the Member State of its establishment and from which workers are to be posted. In other words, employers must normally carry out their activities in the sending Member State;⁷⁴ these activities must be substantial in nature since purely internal management activities are not sufficient to meet the required posting conditions. When assessing whether this condition is met, the specific characteristics of each employer and the real nature of the activities carried out are taken into account to ensure a fair assessment.⁷⁵

Ensuring that substantial activities take place in the sending Member State is meant to act as a safeguard against bogus postings, as it prohibits the use of letterbox companies in sending Member States (with possibly lower social security contributions) to post workers to a receiving country with higher labour costs. The competent institution issuing PD A1s in the sending Member State is required to thoroughly examine the activities carried out by sending employers. To this end, several indicators, inspired by the CJEU case law to avoid malpractices⁷⁶, have been established, including: verifying the place where the employer's registered office and administration are located; the number of administrative staff working in the Member State in which the company is established and in the receiving country; the place where posted workers are recruited and the place where the majority of contracts with clients are concluded; the law applicable to the contracts concluded by the company with its workers, as well as with its clients; the turnover during an appropriately typical period in each country concerned; and the number of contracts performed in the sending Member State.

This is not an exhaustive list, as indicators should be adapted to each specific case and take account the specific nature of the activities carried out by each individual company in the Member State in which it is established,⁷⁷ to verify that there is a genuine link between the employer and the sending country, thus preventing forum (or competence) shopping.

⁷⁴ Article 12(1) Regulation (EC) 883/2004.

⁷⁵ Article 14(2) Regulation (EC) 987/2009.

⁷⁶ Case C-212/97 – *Centros*, EU:C:1999:126, where the Court established that it is contrary to the Treaty provisions for a Member State to refuse to register a branch of a company formed in accordance with the law of another Member State in which it has its registered office but in which it conducts no business where the branch is intended to enable the company in question to carry on its entire business in the State in which that branch is to be created, while avoiding the need to form a company there, thus evading application of the rules governing the formation of companies which, in that State, are more restrictive as regards the paying up of a minimum share capital. However, the Member State concerned still has the possibility to combat fraud. See also Jorens Y., 2022, p. 304,

⁷⁷ Point 1(5) Decision A2.



This is, however, a complex task, both for employers and social security institutions issuing PD A1 forms. For example, it might be especially challenging to define the substantial activities of a temporary employment agency. As noted by the CJEU, for these agencies to qualify for posting, they must not only select and recruit posted workers in the sending Member State, but they must also conduct significant part of their activities of assigning temporary agency workers for the benefit of employers established and carrying out their activities in the territory of the sending Member State.⁷⁸ Hence, temporary employment agencies have to focus on activities (lending labour to user undertakings) in the Member State of their establishment, before posting workers to users in another country. However, similarity of activities in the sending and receiving Member States is not required.⁷⁹

Dialogue

Participating countries agreed that **the existence of substantial activities in the sending Member State can be difficult to verify**. The turnover rate appears to be a common criterion used by social security institutions to verify the presence of substantial activities (e.g. ES, FI, IT, MT, NL, PL, SK), with checks being carried out when the 25% threshold suggested in the Practical Guide is not reached. While the 25% turnover rule is not embedded in the existing legal framework, but only suggested in the Practical Guide, the latter is seen as an interpretative extension of social security coordination rules and therefore applied as such. However, some countries allow certain flexibility. For example, in **Poland**, even in cases where turnover is slightly below 25%, flexibility is applied and posting requests are approved, provided that all other posting conditions are met.

Box 6. Lack of substantial activities leading to PD A1 withdrawals

Germany shared an example of a case where PD A1 forms for nurses posted from Poland were withdrawn. While PD A1s were initially issued, checks determined that there was no actual company employing these nurses in Poland, as they had been recruited through Polish agencies, with no or very few placements in Poland itself. As such, PD A1s were withdrawn and social security contributions had to be paid in Germany.

Some countries may require employers – particularly in high-risk sectors (e.g. the construction sector) – to sign an additional declaration on the nature of their activities, to be checked against information present in national databases (e.g. BE). In some instances, checks focus on verifying the number of employees in the sending country versus those in the receiving State. This was, for example, the case for **Norway**, where the social security institution carries out checks based on the information present on a national employer register, which includes details about the number of employees: if the majority of employees are posted, this is seen as a red flag. In some instances (e.g. FI), PLD participants noted that additional checks are conducted specifically for newly established companies for which extensive information on past activities may not be available.

Another challenge in verifying the existence of substantial activity in the sending country relates to micro enterprises, where the owner is also the sole employee. When such employee is posted for an extended period of time, with little to no remaining connections to the sending country, questions arise as to whether the substantial activity condition is respected (e.g. NO). In such situations, applying the posting rules for self-employed persons (see section 4.1 above) might be more appropriate.

⁷⁸ Case C-784/19 - *Team Power Europe*, EU:C:2021:427, where the Bulgarian Social Security institution rejected a request for issuing a PDA1 form to Team Power Europe, a temporary employment agency. They only employed administrative and managerial staff in Bulgaria, which is sufficient in itself to exclude the application of posting rules. Moreover, all the temporary agency workers were hired with a view to assigning them to user undertakings established in Germany. No temporary employment services were provided in Bulgaria.

⁷⁹ In case C-202/97 - *FTS*, EU:C:2000:75, Paragraph 44 CJEU argued that it is clear from the judgment in *van der Vecht*, that the nature of the work entrusted to workers made available to undertakings based in the Member State in which the temporary employment agency is established and to workers posted to another Member State is not one of the criteria. The fact that the work performed is different from that normally carried out in that establishment is of little consequence.



Where doubts arise, PLD participants indicated that social security institutions in the receiving country tend to approach the receiving company to ask for clarifications as needed, cooperate with the sending Member states to carry out additional checks where possible, or implement a two-step approach whereby existing databases are checked first and employers are reached out to where additional information (e.g. on contracts, payrolls and other indicators of substantial activity in the country) is needed. Additional verification procedures by the sending country may include liaising with the tax authority to gather information to help assess whether substantial activities are being conducted. Overall, however, PLD participants expressed a strong need to promote better cooperation across social security institutions and tax authorities to improve mutual access to existing databases, coupled with increased automation, including the use of AI. Improved cooperation would help address the current lack of interoperability between social security and tax systems, with financial data being spread across several documents and datasets, making it difficult for authorities to map existing information and carry out checks.

Related to verifying substantial activities, feedback from PLD participants indicates that **letterbox companies continue to represent the main challenge across several countries** (e.g. ES, FI, IT, DE, NL, PT), representing a challenge for both sending and receiving Member States. For example, **the Netherlands** often receives PD A1 applications submitted by companies sending workers to countries such as Romania and Bulgaria. However, the requirement of substantial activities in the Netherlands is not complied with. In **Germany**, there are numerous cases of employees formally working for German companies while actually being located in other countries.

Box 7. Tackling letterbox companies in sending and receiving countries

As a receiving country, **Spain** faces significant issues with letterbox companies in countries, such as Portugal or Romania, amongst others, as many workers are being sent to work in Spain through bogus posting and continue to pay social security contributions in the sending country. Tackling these cases requires close cooperation with social security institutions in the country where letterbox companies are established, however this does not always happen smoothly.

As a sending country, Spain also faces the situation of Spanish letterbox countries with bogus posting to certain European countries. To tackle this, Spain carries out inspections through its labour inspectorates to verify whether companies actually exist and perform substantial activities in Spain. Even if a letterbox company is found, Spain will not withdraw PD A1s until they have received assurance from the receiving State that these workers are in their country and will be registered there. To this end, Spain tends to organise joint or concerted inspections or ask the authorities in the receiving country to carry out inspections themselves to check what the actual situation of the workers is. The report from the inspections is then used as legal evidence to withdraw PD A1s as relevant.

As a sending country, **Portugal** regularly receives requests from receiving Member States to investigate letterbox companies. Usually, these companies either do not have physical headquarters, or are registered at private residences, or only have one or two staff members. Portugal relies on cooperation and joint inspections to tackle these cases.

In **Slovenia**, while the information declared in PD A1s is normally trusted, if the labour inspectorate is notified that there is a potential lack of substantial activity, employers are approached and asked to provide written documentation to prove they are not a letterbox company. Should these employers either not provide this additional documentation or share incomplete information, further checks are carried out via inspections. When a letterbox company is identified, the relevant social security institution in Slovenia is alerted so that PD A1s can be withdrawn, and the receiving country is duly notified. Moreover, if workers in fact work for a Slovenian company under its supervision, and there is no genuine foreign employer as no activity is carried out in the state of establishment (i.e. it is a “letterbox company”), it may be considered as a disguised employment relationship,



and classified in Slovenia as undeclared work or illegal employment. In other words, if elements of subordination, personal performance of work, and remuneration are identified, it is deemed that an employment relationship exists, regardless of its formal designation.

5.2 Genuine employer

Introduction

Posted workers must be sent to perform work on behalf of the sending employer.⁸⁰ To this end, a **‘direct relationship’ between the employers established in the sending Member State and the posted workers has to be demonstrated and maintained.**⁸¹ In other words, as noted by CJEU, *‘whatever the wording of the contractual documents, it is necessary to identify the entity which actually exercises authority over the worker, which bears, in reality, the relevant wage costs, and which has the actual power to dismiss that worker.’*⁸²

To assess the existence of such direct relationship, the circumstances of employment must show that, during the posting period, the employee worked under the authority of the sending enterprise.⁸³ To verify whether the direct relationship between the posted worker and the sending company continues to exist, several elements must be taken into account. Elements to be verified include ensuring that the sending company continues to be responsible for: the worker’s recruitment; their employment contract; their remuneration (without prejudice to possible agreements between the employer in the sending State and the undertaking in the receiving State on the payment to the workers)⁸⁴ and dismissal; and determining the nature of the work⁸⁵ (not applicable to temporary employment agencies, see above). Specific instructions for carrying out work may also be given by the undertaking.

Either the authorities of the sending or receiving (in collaboration with the sending) Member State can verify that a direct relationship between the posted worker and the sending company continues to exist throughout the posting. This is key as posting of workers should enable their employers to freely provide services in the internal market and must remain attached to them.

Dialogue

PLD participating countries highlighted several approaches to verifying the direct relationship between the posting employer and the posted worker. Engaging with the worker remains crucial to understanding which employer is providing direction for the work to be carried out. Moreover, verifying which company is profiting from the work of the posted worker also represents an important indicator to assess the existence of a direct relationship between posted workers and their sending employer: instances where the profit is with the receiving employer are usually indicative of higher chances that posting conditions are not complied with. However, identifying which employer is responsible for remuneration and providing instructions to the posted workers remains the primary indicators to assess the existence of a direct link between posted workers and their sending companies.

Examples of approaches to verifying the direct link between the worker and the posting employer include **Malta**, where the Department for Social Security prioritises checking that the employer recruits, hires, and pays the worker; that the employment contract remains under Maltese law; and that the supervision and dismissal authority

⁸⁰ Article 12(1) Regulation (EC) 883/2004

⁸¹ Case -202/97 - *FTS*, EU:C:2000:75, case C-2/05 - *Herbosch Kiere*, EU:C:2006:69.

⁸² C-610/18 - *AFMB and Others*, EU:C:2020:565.

⁸³ Houwerzijl M., Verschueren H., 2024, p. 240.

⁸⁴ For instance, within multinational companies a company where worker is posted could pay all or part of the salary and reimburse it from the parent company sending a worker. It remains the responsibility of the latter and is not contrary to the posting rules. Jorens Y., 2022, p. 299.

⁸⁵ Point 1(3) Decision No A2.



remains with the Maltese company. Similarly, in **Italy**, checks are conducted to ensure that the worker formally remains an employee of the sending employer, that the receiving company exercises managerial and organisational authority during the posting, and that no new employment contract is set up between the posted worker and the receiving company.

Key take-aways: posting conditions for employers

- ▶ The existence of substantial activities in the sending Member State can be hard to verify. The turnover rate seems to be the main verifying criterion. However, the 25% indicator is not a strict rule, and some countries take other circumstances into account. Among them are additional employer declarations, the number of employees, contracts and payroll. More difficulties are posed by newly established companies and posted workers who are sole proprietors of a company (as the direct link to the sending country might be lost).
- ▶ Letterbox companies continue to represent a key challenge. Internal and external collaboration is required to carry out verification processes and assess dubious cases. Digitalisation might speed up and improve checks, but only if steps are taken to ensure that information is made accessible and more easily shared between relevant public institutions.
- ▶ Engaging with the worker is a key source of information to understand who the worker's actual employer is. The main indicators remain the remuneration of the worker and the provision of instructions.

6.0 Ex-ante verification procedures

Introduction

PD A1 certificates play a key role in verifying whether the conditions for exceptions to the *lex loci laboris* principle are met. The PD A1 form is a document issued by the competent authority of the sending Member State, stating that the worker concerned remains subject exclusively to the social security legislation of the sending country. As such, PD A1 certificates allow their holders (and their employers) to exercise their right to free movement while clarifying which individual single social security system remains applicable. The Single Digital Gateway facilitates online access to information, administrative procedures, and assistance services that EU citizens and businesses may need in another EU country. Following the adoption of the gateway regulation,⁸⁶ the European Commission and national administrations are developing a network of national portals to provide information for citizens and businesses, including online application for PD A1 certificates.

While PD A1s provide for legal certainty and thereby support the freedom to provide services across the EU, their reliability is sometimes questioned. The body issuing the document is obliged to assess the relevant facts correctly and must guarantee the accuracy of the data that has been entered.⁸⁷ The principle of sincere cooperation (or 'cooperation in good faith' as defined by the CJEU),⁸⁸ requires the issuing institution to carry out a proper assessment of all relevant facts and, consequently, to ensure that the information included in PD A1 certificates is correct. As such, the responsibility for applying posting rules lies almost entirely within the competence of the sending Member State. However, issuing institutions often face several challenges, ranging from processing a high number of requests to relying on limited staff and/or access to automation tools to verify

⁸⁶ Regulation (EU) 2018/1724 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012, OJ L 295, 21.11.2018.

⁸⁷ See CJEU decisions C-202/97 – *FTS*, EU:C:2000:75, C-178/97 – *Banks and Others*, EU:C:2000:169, C-115/11 – *Format* EU:C:2000:169

⁸⁸ See Article 4(3) TEU and e.g. case C-620/15 – *A-Rosa Flussschiff*, EU:C:2017:309, para 39.



compliance with posting conditions. In some instances, to avoid lengthy verification procedures and potentially causing delays in processing requests, some Member States have developed a simplified approach to issuing PD A1s, where only compliance with essential prerequisites is verified, either through direct queries to the applicant or by checking national registers or databases.

As a result, requests are not always processed with the same level of accuracy, with rubber-stamping sometimes replacing proper investigation.⁸⁹ It is estimated that about half of Member States for which information is available do not perform any assessment of posting conditions when issuing PD A1 certificates, although compliance might be subject to ex-post verification.⁹⁰ This relates especially to verifying the existence of a genuine (normal, substantive) activity in the sending Member State, the existence of an employment relationship, and the prohibition of replacing posted workers.⁹¹ This might lead to issuing **unchecked, incorrect or incomplete PD A1 certificates, increasing the risk of bogus postings**. Furthermore, PD A1 certificates, even when dubious, bind social security institutions and courts of law in the receiving Member State.⁹²

Another challenge is represented by the **length of the administrative process to issue PD A1s**. Deadlines to issue administrative decisions on PD A1s tend to vary, with the procedure at times lasting a month or longer. While both existing EU law and the CJEU emphasise the importance of requesting and issuing PD A1 certificates in advance whenever possible,⁹³ and their issuing is required (or desired) by many (receiving) Member States, **in practice, it may not always be possible and necessary to obtain PD A1s before the posting takes place**. For example, in the case of short work trips abroad, which are not always planned in advance, it may not be possible to obtain a PD A1 in advance, as lengthy administrative procedures mean that the certificate would likely be issued after the worker has already returned from the posting. To facilitate posting, particularly in the case of activities that have a short duration, some Member States do not require PD A1 certificates to be issued (i.e., Belgium, Denmark, France, Austria, and Finland). Other exceptions exist, for example for persons working in the public sector (Belgium and France), professional artists (Belgium, Denmark, Austria, France, and the Netherlands), athletes (Belgium, Denmark, France, Austria, and the Netherlands), crews of seagoing merchant ships (Poland), or persons participating in seminars or conferences (Belgium, Denmark, France, Austria, and the Netherlands).⁹⁴

Against every administrative decision (and even if no decision is taken in due time), judicial review should be possible. However, judicial review of PD A1 certificates is far from guaranteed. The courts of law in the sending Member State might have the jurisdiction to invalidate PD A1 certificates or revert the procedure to the issuing institution, as part of administrative review. However, posted workers and their employers might not have a legal interest to start the court proceedings to invalidate PD A1s as they have requested its issuing in the first place. Moreover, social security institutions or labour inspectorates of the receiving Member States may face difficulties with legal standing in the sending Member State as well.⁹⁵

Dialogue

Digitalisation is seen as a key area for improvement, as it would help with making relevant information more readily available and ease the verification process. Regardless of the level of digitalisation and procedures in place, cooperation between sending and receiving countries continues to represent the biggest challenge. Receiving

⁸⁹ Rennuy N., 2020, p. 213.

⁹⁰ Rennuy N., 2020, p. 219.

⁹¹ Ibid.

⁹² Article 5 Regulation (EC) 987/2009. See also case C-421/23 - *ONSS (Faux certificats A 1)*, EU:C:2025:36.

⁹³ Article 15 Regulation (EC) 987/2009 and e.g. case C-527/16 - *Alpenrind and Others*, EU:C:2018:669, para 72.

⁹⁴ It seems that in Germany registration in the national declaration tools is only obligatory for certain sectors of activity. Moreover, notifications pursuant to the Minimum Wage Act are not required with regard to employees whose sustained pay exceeds a gross EUR 4 319 a month, or whose sustained regular monthly pay exceeds a gross EUR 2 879 provided that the employer can submit evidence of such payment for the past full 12 months. De Wispelaere F., De Smedt, L., Pacolet J., 2024, p. 17.

⁹⁵ Erroneous PD A1 certificates could not be challenged before the courts in the receiving Member State, since it has not issued them. See case C-2/05 - *Herbosch Kiere*, EU:C:2006:69 and Rennuy N., 2020, p. 216.



social security institutions reach out to their sister organisations in sending countries, however the level of responsiveness varies greatly across countries.

Many countries (e.g. AT, BE, DE, ES, FI, IT, MT, PL, PT, SI, SK) already rely on digitalised application processes. Claims for PD A1 forms can be submitted through online systems, and processes for the issuance of PD A1s are partially automated, to speed up the procedure and ensure that certificates can be issued in a timely manner. However, the extent to which automatic checks are in place to verify the accuracy of the information varies from country to country. Moreover, even when automation is in place, human intervention is sought when anomalies are detected by the digitalised systems. In these instances, social security institutions receive a notification and PD A1 applications are checked manually, with inspections being carried out as needed.

Box 8. Digitalised systems for processing PD A1s

The PLDs identified the following examples of the use of digitalised/automated systems to process PD A1 applications and issuing certificates:

- ▶ **Austria** manages a portal for companies to communicate with social insurance providers. Set up in 1995, it now includes a digitalised application process for PD A1 forms. The applications are processed through automatic checks and the certificate can be issued within three hours if no issues are detected (if they are, then applications are checked manually).
- ▶ **Belgium** operates a largely automatised system, with PD A1s being issued in 10 minutes. The fast processing due to several checks being fully automated, e.g. whether contributions have been paid. Out of around 12.000 PD A1 applications submitted per year, around 4.600 are rejected due to lack of payment of social security contributions. Employers can provide additional evidence that the payment has been made, in which case PD A1s can then be issued manually (this is usually the case for around 3.000 certificates per year). Moreover, as receiving country, Belgium requires employers and self-employed workers to declare their present through the Limosa platform.
- ▶ While there is no standardized procedure in **Germany**, as there are over 100 institutions responsible for issuing PD A1, the German pension insurance system operates a fully automated approval process, with the processing time being 24 hours. Only in case of doubt, additional documents are requested. The large majority (90%) of German postings are shorter than 90 days and are checked through automated online systems. Only those cases where the posting is meant to last longer than 90 days are manually checked and processing can take several weeks.
- ▶ In **Spain**, PD A1 applications are submitted online, with the system automatically checking the information provided against that available across a range of databases. If further checks were needed, the Social Security institution (TGSS) may access data from other bodies such as the Spanish Tax Agency, etc., with which the TGSS has a collaboration agreement; or, where appropriate, request a report from the Labour Inspectorate (ITSS) on compliance with the conditions of the posting by both the company and the worker. Certificates are usually issued within 24 hours, unless issues are spotted which require manual intervention with further review and/or field inspections
- ▶ In **Finland**, the application process for PD A1s is largely automated through a “dynamic questionnaire” which includes tailored questions through routing, depending on the information that is being provided by the applicants. Generally, PD A1s can be issued within 1 hour, with around 67% of them being issued automatically. Through the system, automatic checks are used to swiftly verify contribution history and residency. If issues are spotted, then applications are handled manually.



- ▶ In **Italy**, procedures for applying for PD A1 are fully electronic since April 2023.⁹⁶ Tools include a national online platform at INPS, which allows for electronic applications from employers, intermediaries, or workers. The system guides users through case-specific workflows, pre-populates data where possible, tracks application status online, and issues certificates electronically upon approval. Processing times vary, but online applications can be granted within a few days, while more complex cases might require additional information and, therefore, may take longer.
- ▶ Through Servizz.gov and the MySocialSecurity portal, **Malta** provides online access for applications, tracking, and status updates. This digital infrastructure enhances transparency and reduces administrative errors. Automation has improved processing speed but never replaces human due diligence. Each case is checked against risk indicators (e.g., newly registered companies, high posting volumes, inconsistent employment histories). Verification processes include checking the worker's contribution record and prior affiliation, as well as the employer's VAT and tax registration.
- ▶ **Polish** social security institution developed an online authentication certification service, that can be used free of charge by anyone who might need it, including social security institutions in receiving countries. The service allows users to insert the code of the PD A1 certificate to be checked and verify that it has been issued by the Polish social security institution. The system shows whether the certificate has been issued and is valid, has been revoked, or the code does not correspond to any existing certificate (implying that it has been falsified). The service was launched in April 2022, with data showing that it has been used over 200.000 times each year (however, there is no data on how many certificates have been checked to date).
- ▶ In **Portugal**, PD A1s applications are also submitted online. They are handled through the *Segurança Social Direta* (SSD) online portal,⁹⁷ a fully digital platform for employers and workers. Access requires authentication via Citizen Card, Digital Mobile Key, or NISS/password. Status can be tracked via SSD dashboard or *e-Clic* desk for queries/complaints using the request ID.⁹⁸ Certificates are issued digitally and processing time varies from several days to several weeks. The validity of PD A1 can be verified online.⁹⁹
- ▶ In **Slovenia**, employers submit PD A1s applications via an online portal. By submitting the application, employers sign a declaration to confirm that posting conditions are met. Automated checks are carried out as the platform is linked to other databases (e.g. databases managed by the Financial Administration, the Labour Inspectorate¹⁰⁰ and the Business Register of Slovenia¹⁰¹). On average, PD A1s are issued on the same or next working day (although, the deadline is within 5 working days).

⁹⁶ INPS Circular No. 136 of December 23, 2022, applications for A1 certificates, available at https://www.inps.it/it/inps-comunica/atti/circolari-messaggi-e-normativa/dettaglio_circolari-e-messaggi.2022.12.circolare-numero-136-del-23-12-2022_14029.html.

⁹⁷ See <https://www.seg-social.pt/ptss/pssd/home?dswid=5250>.

⁹⁸ See <https://www2.gov.pt/en/acesso-aos-servicos-publicos-em-portugal/atendimento-nos-servicos-da-seguranca-social> and <https://www2.gov.pt/en/cidadaos-europeus-viajar-viver-e-fazer-negocios-em-portugal/trabalhadores-em-portugal/destacamento-de-trabalhadores-para-paises-da-uniao-europeia>.

⁹⁹ See <https://work-supply.com/how-to-verify-the-legitimacy-a1-certificate-is-legit/>.

¹⁰⁰ The Health Insurance Institute of Slovenia (ZZZS) may obtain data from the records of the Labour Inspectorate on legally finalised offences which, in accordance with the provisions of the Act on the Cross-Border Provision of Services (ZČmIS-1), affect the decisions of ZZZS in procedures conducted under ZČmIS-1.

¹⁰¹ The Financial Administration of the Republic of Slovenia (FURS) has concluded a protocol with the Health Insurance Institute of Slovenia (ZZZS) for the provision of data from tax records. Under this protocol, before issuing a PD A1 certificate, ZZZS verifies the following for the employer:

- whether all due mandatory taxes and other non-tax financial obligations have been settled,
- whether, as of the date of application submission, REK-O forms for salary payments have been submitted for the last six months prior to the month of the A1 application, or for the period since establishment if it is shorter than six months,



- In **Slovakia** PD A1 forms can be submitted online. These are checked to ensure all relevant facts according to existing regulations and the Practical Guide are complied with. Additional checks (e.g. of supply chains and subcontracting) are carried out for the construction sector to tackle bogus posting. Moreover, since December 2023, a faster route for the approval of PD A1 forms for the transport sector has been set up, with certificates being automatically approved within 24 hours if submitted online.

However, in some countries, applications submitted online are still manually verified. In **Ireland**, while applications are submitted online, these are assessed manually by civil servants from the Department of Social Protection. When potential issues are spotted, further checks are carried out. On average, it takes 3-4 weeks to process online applications, whereas applications in paper are processed within 7-8 weeks. As applications have been increasing, the Department of Social Protection is planning to automate checks, but the pace of this process will depend on the availability of resources to support this system update. In **Norway**, applications can be submitted both via a digital platform or by post. However, there is no automation in terms of processing. When submitted online, the system will automatically gather data, so that the case handler can already receive relevant information to base their decision on.

In some countries, suspicious or complying companies can be blacklisted or whitelisted. In **France, Austria, Slovakia**, companies that have a history of bogus posting or of anomalies in their PD A1 forms are sometimes included in (non-publicly available) “black lists”. In **France** PD A1 applications from companies on the black list are directly manually checked rather than being processed through the automated digital system. Conversely, social security institutions in **the Netherlands** have been advised against setting up such lists, as they could be deemed as discriminatory. Instead, they have developed a “white list” of reliable temporary employment agencies that have received a certificate of compliance with existing labour and social security laws, and that are encouraged to “name and shame” other non-compliant agencies to the labour inspectorate.

PD A1s can be issued retroactively by many sending countries, although attitudes towards retroactive PD A1s differ. For instance, advice provided in **Germany** is that PD A1 applications should be submitted “as soon as possible”, implying that the preference is to issue certificates prior to the posting but that issuing them retroactively is also possible if needed. In **Slovakia**, issuing retroactive PD A1s is also possible, but this can pose challenges in case the receiving country does not accept retroactive certificates in practice. Some countries (e.g. BE, ES, FI, IE, NO), generally issue PD A1 retroactively, to support labour mobility as much as possible. However, applications for retroactive certificates are handled differently. For example, in **Belgium** these are processed automatically, whereas in **Spain** the process is not automated and always requires manual handling with the applicant having to justify the delay.

Participating countries as receiving Member States are relatively strict with PD A1 certificates, with some countries (e.g. NL, MT) “tolerating” postings without an issued PD A1 only for a short time and in exceptional circumstances (e.g. administrative delays or evidence of genuine employment). Other countries (e.g. DE, SK, FR¹⁰²) have a zero-tolerance approach. **Germany**, for example, requires PD A1s also for short business trips and asks for social security contributions if certificates are not provided. Similarly, in **Austria**, PD A1s are necessary from the first day of any cross-border activity, no matter how short. If a check happens and evidence in German or English is provided to prove that it was not possible to obtain PD A1 before the posting, equivalent documents in German or

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- whether the employer has an active transaction account registered in the tax register in accordance with the Financial Administration Act (ZFU), and its status,
 - whether any violations related to payment for work, working time, or illegal employment have been established, for which a fine has been imposed by a final decision (or multiple final decisions),
 - whether any violations have been established in relation to obstructing or preventing access to business premises, hindering the smooth performance of inspection activities, or failing to provide written explanations, documentation, or statements related to the subject of inspection, in accordance with the law governing inspection supervision, for which a fine has been imposed by a final decision (or multiple final decisions).

¹⁰² See e.g. https://www.cleiss.fr/actu/2017/1702-detachement-a1_en.html.



English may suffice (application for PD A1 and documents proving that the employee is subject to foreign social security for the duration of the posting).

In **Slovenia**, if a posted worker indicates that their employer in the sending country has asked for a PD A1 but has not received it yet, the labour inspectorate first checks with the health insurance institute whether a posting notification was received via the Electronic Exchange of Social Security Information (EESSI) system or use IMI system to verify if any additional information is available. If the conditions for lawful posting are not met, the performance of work constitutes illegal work or abuse of the posting system. Labour Inspectors may prohibit further provision of services by a foreign employer, but not solely due to the absence of the A1 certificate. Prohibition of work is a last resort measure (e.g. if A1 certificate does not exist or has been refused).

There are possible steps that could be taken to address situations in which PD A1 was not issued on time before the posting commences. EESSI is used to communicate with the sending Member State to check the status of the application. If not via EESSI, cooperation is sought with the sending country to gain more information on the application process, however how fast issues can be solved highly depends on their willingness to cooperate and the manpower at their disposal. For instance, **Poland** set up its own “dialogue and conciliation procedure team”. It consists of people tasked with carrying out investigations and liaising with other departments and institutions as needed. So far, **Belgium** was the receiving country that has sent the highest number of requests under this procedure, but was overtaken by **the Netherlands** in 2024. Data shows that around 65% of PD A1 certificates investigated through this procedure were deemed valid and kept, but around a third were revoked.

Cooperation between sending and receiving Member States was highlighted as crucial in this stage, with some countries standing out for being particularly unresponsive and not sharing sufficient information. This represents an issue as these countries tend to send a high number of workers to other Member States, with good cooperation becoming even more crucial.

Key take-away: process for issuing PD A1 certificates

- ▶ As sending Member States, many countries rely on digitalised and (partially) automated procedures for issuing posting certificates (PD A1s). However, some countries still rely predominately on human handling of cases, while others do so in the event of anomalies, companies with fraudulent behaviour in the past, or in case of retroactive issuing of posting certificates.
- ▶ Some sending Member States are inclined to retroactive issuing of posting certificates to promote labour mobility. However, as receiving countries, many are much stricter in checking the PD A1 certificates and only some tolerate short postings without them.
- ▶ Cooperation within and between countries is required to detect fraudulent posting certificates and ensure genuine posting.

7.0 Posting conditions and their effective verification

7.1 Ex-post mechanisms to investigate breaches of posting rules



The question on whether the sending or the receiving Member State should monitor posting is rather rhetorical, as both are expected to cooperate. Once a PD A1 certificate has been issued and a worker is posted to the receiving country, **several opportunities exist to prevent bogus posting and verify that the posting conditions are met throughout the posting period**, and these can see the involvement of either the sending/receiving Member State, or both.

As noted above, PDA1 certificates only refer to facts known at the time of the submission of the request. However, posting conditions must be complied with on an ongoing basis and continuously monitored during the entire posting period. For example, posted workers and their employers should maintain a direct relationship during the period of posting.¹⁰³ As such, the need **to enforce posting conditions begins, rather than ends, with the issuing of a PD A1 certificate**.¹⁰⁴ However, neither existing EU-level social security coordination rules nor the CJEU case law pay much attention to the follow-up of PD A1 certificates, while the Posting Enforcement Directive¹⁰⁵ only mentions a general duty to continue monitoring posting conditions. As such, no formal legal obligation exists.

From the side of the sending Member State, therefore, institutions issuing PD A1s can conduct ex-post verification procedures to ensure that posting conditions are still met. However, these processes only take place based on the individual institution's own initiative or upon request. Further, the fact that sending countries can only carry out fact-finding actions within their territory often limits the possibility of conducting ex-post verification, as relevant evidence might be in the receiving country.¹⁰⁶

In the case of receiving Member States, while it would be in their interest to verify ongoing compliance with posting conditions, to avoid bogus posting, collect contributions, and prevent labour market distortions, in practice, receiving **countries are obliged to respect and trust PD A1 certificates issued by the sending EU Member State**.¹⁰⁷ Based on the principles of sincere cooperation and mutual trust, documents issued by the institution of a Member State must be accepted by the institutions of other Member States as long as they have not been withdrawn or declared to be invalid by the country in which they were issued.¹⁰⁸ Another approach that receiving EU Member States can use to monitor posting is requiring prior notification.¹⁰⁹ To date, evidence indicates that all 27 Member States have adopted "prior declaration tools" for service providers,¹¹⁰ although only four countries (Belgium, Denmark, the Netherlands, and Slovenia¹¹¹) require the registration of incoming self-employed persons (mostly limited to several sectors of activity).¹¹²

While prior notification is required under the Posting Directive (i.e. labour law), existing social security regulations also foresee a mechanism for receiving Member States to be notified about postings to their territory via the EESSI system. In line with the requirement laid down in Article 15(1) of Regulation 987/2009, the sending Member State, upon issuance of a PD A1, is obliged to communicate the posting to the receiving Member State via EESSI through Business Use Case LA_BUC_04 and Structured Electronic Document A009 „Notification of Posting“. Through the

¹⁰³ In case C-2/05 - *Herbosch Kiere*, EU:C:2006:69, para 19, the CJEU emphasised that 'the maintenance during the period of posting of those workers of a direct link between the undertaking established in a Member State and the workers which it has posted to another Member State is one of the requirements'.

¹⁰⁴ Rennuy N., 2020, p. 228.

¹⁰⁵ Article 7(2) Directive 2014/67/EU states that 'The Member State of establishment of the service provider shall continue to monitor, control and take the necessary supervisory or enforcement measures, in accordance with its national law, practice and administrative procedures, with respect to workers posted to another Member State.'

¹⁰⁶ Rennuy N., 2020, p. 229.

¹⁰⁷ If workers, e.g. on construction sited can be properly identified in the first place. Jorens Y., 2022, p. 459.

¹⁰⁸ Article 5(1) Regulation 981/2009.

¹⁰⁹ For instance in Austria employers posting employees to Austria must notify the posting in advance according to Section 19 Lohn- und Sozialdumping-Bekämpfungsgesetz/LSDBG (Act to Combat Social Dumping and Fraud). See [Meldung einer Entsendung nach Österreich](#).

¹¹⁰ More De Wispelaere F., De Smedt, L., Pacolet J, 2024, p. 15.

¹¹¹ In Slovenia, before each provision of services,, a self-employed person must, in accordance with national legislation, submit a registration to the Employment Service of the Republic of Slovenia, and provide requested information (as explained in the dialogue process).

¹¹² Ibid., p. 26. For instance, for Slovenia see <https://zavarovanec.zzs.si/e-storitve-zzs/checking-the-validity-of-an-a1-certificate>.



EESSI system, receiving Member States should be able to have an overview of the workers posted to their territory under the Social Security Coordination Regulations.

In the case of a dispute between the competent bodies of the sending and receiving Member States on whether a PD A1 certificate has been issued correctly, countries are required to cooperate. At the request of the receiving country, the issuing institution of the sending Member State must re-examine the conditions for issuing the certificate and, if necessary, withdraw it. If an agreement cannot be reached, the countries concerned submit their dispute to the Administrative Commission for the Coordination of Social Security Systems and undergo a Dialogue and Conciliation procedure.¹¹³ According to Decision A1, there are three stages of such procedure. In the first stage of the Dialogue and Conciliation procedure the requesting institution contacts the requested institution with a substantiated request (supported by evidence) to ask for necessary clarifications of its decision and, where appropriate, to withdraw or declare invalid the relevant document, or to review or annul its decision. The requested institution has to confirm receipt within 10 working days and send its reply within three months at the latest (extendable under justified circumstances), notifying all the involved parties about its decision. Second stage of the dialogue procedure consists of the institutions notifying their competent authorities. The latter may decide to initiate the second stage of the dialogue procedure or to refer the matter directly to the Administrative Commission. If the competent authorities initiate the second stage of the dialogue procedure, they each appoint a central contact person within two weeks after having been notified by the institutions. They have to seek an agreement on the matter within six weeks after their appointment. The contact persons each prepare a record of their activities and notify the institutions about the outcome of the second stage of the dialogue procedure. The last stage of this procedure is the conciliation procedure. If agreement cannot be reached during the dialogue procedure, the competent authorities may bring the matter before the Administrative Commission, whose task is to try to reconcile the points of view within six months of the date on which the matter was brought before it. The Administrative Commission may decide to refer the matter to the Conciliation Board.

Should the Administrative Commission also fail to reconcile the positions of the countries involved, the receiving Member State has the right to bring a non-compliance action under Article 259 TFEU, for the CJEU to intervene and rule on the applicable legislation and the accuracy of the PD A1 certificate.¹¹⁴ Moreover, according to the CJEU, the national courts of the receiving Member State are not authorised to verify the validity of (or disregard) PD A1 certificate as regards the substantiation of the facts on the basis of which such a certificate has been issued (notably the existence of a direct link between the employer and posted workers).¹¹⁵ Moreover, even where a criminal court of the receiving country could deem a PD A1 certificate false, it cannot do so if the sending Member State continues to collect social security contributions, and before carrying out a dialogue and conciliation procedure. This constitutes a compulsory precondition before a decision by a court of the receiving Member State is taken, as clarified by the *ONSS* case.¹¹⁶

To enable sincere cooperation among the Member State, **mediation is an innovative tailor-made mechanism provided by ELA to resolve disputes on EU labour mobility**, (which also includes disputes relating to social security coordination) between Members States in an effective manner. Member States and national SOLVIT centres can refer disputed individual EU law application cases for mediation to ELA after failing to solve them by means of direct contact and dialogue. ELA can also suggest mediation on its own initiative. The aim of mediation is to reconcile divergent points of views between the Member States and to adopt a non-binding opinion. Cases can be submitted to ELA for mediation in areas covered by the ELA Regulation namely in the areas of (1) free

¹¹³ See also Article 5 Regulation (EC) 987/2009 and Decision No. A1 of 12.06. 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provisions of benefits under Regulation (EC) 883/2004, C 106, 24/04/2010. see also ELA Workflow Guidance for the interaction between ELA and the Administrative Commission in the event of disputes between member states on matters that concern EU social security coordination during the course of a mediation before ELA, October 2022.

¹¹⁴ Houwerzijl M., Verschueren H., 2024, p. 242

¹¹⁵ See e.g. case C-370/17 – *CRNPAC*, EU:C:2020:260.

¹¹⁶ Case C-421/23 - *ONSS (Faux certificats A 1)*, EU:C:2025:36.



movement of workers; (2) posting of workers; (3) social security coordination and (iv) social legislation in road transport.

A specificity is that when disputes between Member States that are (in full or only in part) concerned with the application of EU social security coordination rules may fall within the respective mandates of ELA and the AC, and Member States are in principle free to decide which dispute resolution mechanism they want to activate with a view to resolving their dispute. There is consequently a need to have rules on the respective competences, co-operation modalities and exchange of information between both bodies for the different situations that may occur.

Within this context, article 13(10) of the founding Regulation (EU) 2019/1149 determines that: “the mediation before ELA shall be without prejudice to the competence of the AC, and all decisions it takes shall take into account all relevant decisions of the AC.” Article 13(11) installs the obligation to establish a cooperation agreement between the AC and ELA, in order to ensure good cooperation, to coordinate the activities in mutual agreement and to avoid any duplication in cases of mediation which concern both issues of social security and labour law. The AC-ELA Agreement was approved by ELA’s Management Board and entered into force on 1 June 2022.¹¹⁷

Proposals have also been made to amend Social Security Coordination Regulations to support more effective monitoring of postings. These proposals envisaged that PD A1s issued by the competent institution of a sending Member State should only be valid if all sections indicated as compulsory are completed. Moreover, proposed changes also include an obligation for the sending Member State to respond within 25 working days (or if urgent in 2 working days) to requests by the receiving Member State to clarify the validity of PD A1 forms or the facts based on which they have been issued. If fraud is detected, the document would then need to be corrected or withdrawn immediately and with retroactive effect.¹¹⁸

Dialogue

Across PLD participating countries, a clear pattern emerges: ex-post monitoring of PD A1 certificates varies widely, with only a few sending countries conducting systematic checks, while most perform verifications only when concerns are raised or irregularities are detected. This uneven approach results in differing levels of oversight and enforcement across the EU.

A small number of countries apply routine, structured checks. **Slovakia** offers one of the most systematic models: branches of the Social Insurance Agency are required to review PD A1 certificates one month after issuance, including verifying whether social security contributions are being paid by the sending company. If contributions are not being paid, the company is notified and failure to regularise payments leads to the withdrawal of the PD A1 and notification of the receiving country.

Box 9. Ex-post verification in Spain

In **Spain**, regular checks are carried out, particularly in the case of “known names,” such as administrators previously associated with letterbox companies who have set up a new business. Although no formal record or blacklist exists, internal notes are used within relevant databases to more easily flag potential new letterbox companies. Spanish authorities also examine companies with a disproportionately high share (e.g. 80%) of staff posted abroad and act on complaints received from trade unions. Compliance with social security contributions and wage levels is monitored as well. For example, when Spanish companies post workers to Germany (i.e. a country with higher salaries), the German labour inspectorate may be contacted to verify adherence to German

¹¹⁷ AC-ELA_Agreement_for_signing_17.12.2021_NB.pdf

¹¹⁸ See proposed amendment to Article 5 Regulation (EC) 987/2009. The obligation for the institutions of the Member States to make a proper assessment of the relevant facts and to guarantee that information on the basis of which the certificates are issued is correct shall be added in Article 19 Regulation (EC) 987/2009.



wage levels. Where violations are identified, penalties are issued. Between 2022 and 2024, Spain withdrew 2,090 PD A1 certificates due to fraud.

In contrast, many countries rely on more sporadic, ad hoc checks. **France** performs assessments on a case-by-case basis, which may result in adjusting the duration of PD A1 certificates or compensating the receiving country. **Malta's** post-issuance monitoring is more limited but involves verifying contribution histories and requesting evidence from employers when needed. Its Fraud and Investigations Unit works with several national bodies including the National Insurance Compliance Unit, DIER and Jobsplus to examine suspected chain postings or instances of false self-employment. Alerts from receiving countries through EESSI commonly trigger further investigation, and PD A1 certificates can be revoked with contributions recovered in cases of abuse. **Austria** and **Poland** follow a similar pattern: ongoing compliance is generally not monitored unless concerns are reported by the receiving country or irregularities in contributions are detected. Polish authorities collaborate closely with regional branches to contact employers or workers directly and use EESSI to communicate changes. **Germany** also performs checks only when alerted by receiving countries or when a posting ends earlier than expected.

In several countries, monitoring largely depends on external signals or changes in workers' circumstances. **Norway** conducts follow-up checks only when employees raise issues or new information becomes available. **Finland** shares lists of approved PD A1 certificates with pension insurance companies and with the Social Insurance Institution (Kela), which is responsible for issuing payments for benefits. Pension insurance companies monitor that the employer insures the employee during the validity of the PD A1. When information about changes in the employee's situation (e.g. residency, change of work situation) is received from these bodies, PD A1 certificates may be withdrawn if the conditions are no longer met. **Belgium**, similarly, undertakes checks when irregularities are identified. Over recent years, Belgian authorities have focused particularly on EU citizens registering as self-employed in Belgium and immediately applying for PD A1 certificates to work abroad. **Slovenia's** capacity to conduct ex-post checks relies mainly on information exchanged through IMI, which can prompt further verification. **Ireland** verifies PD A1 information primarily using national revenue systems, revising certificates when inconsistencies arise.

Employers are legally obliged to communicate any changes to posting conditions to social security institutions, yet the extent and timeliness of compliance vary widely. While some countries see regular reporting and well-established procedures, others experience delays, limited employer engagement, or weak enforcement mechanisms. **Italy** sees regular reporting, supported by a dedicated form through which employers can communicate changes; once received, a new PD A1 is issued. In **Poland**, reporting amendments is a common practice: at least 20% of online requests concern changes to existing PD A1 certificates. **Slovakia** follows a similar pattern, with employers, employees, and self-employed persons frequently informing the Social Insurance Agency of changes using a standard form. When entities repeatedly fail to report changes, the issuance of new PD A1s becomes more restrictive. In **Norway** there is an obligation on each individual employer/employee to communicate relevant changes, which is explicitly stated in the decision accompanying approved PD A1s. **Germany** also requires employers applying for PD A1 certificates to sign a declaration committing to report any relevant changes in posting conditions. While notifications can be submitted in any format - letter, email, or fax, and should be provided immediately, in practice this obligation is met more consistently by large international companies. However, no sanctions/fines are foreseen for employers for failing to report changes.

Box 10. Addressing changes to posting situations

PLD participants discussed a potential case in which an employee from Germany posted to country X for a period of 12 months with a regular PD A1, who is then hired after six months by an employer in the receiving



country, with this change not being communicated to German authorities. PLD participants from Germany noted that unless alerted that the posting has stopped, authorities would not act. Companies are audited every four years and where irregularities are found, measures can be taken. According to other participants, this might be problematic as the German worker would formally still be posted based on a PD A1 that has not been revoked, which, in turn would mean that country X would have no reason to ask for social security contributions instead of Germany. As such, other countries (e.g. AT, IT, NL) noted that their approach would be to check why social contributions have stopped, and to then adjust/reduce the posting period as relevant.

Technical solutions for social security institutions to more rapidly react to similar situations were also identified, including:

- ▶ Improving internal communication between teams/units/institutions collecting/monitoring social security contributions and those issuing PD A1s, so that the former can alert the latter when contributions are not being paid.
- ▶ Using EESSI and digital wallets to help with real-time verification, provided that PD A1s are revoked/amended, and Member States update the relevant information.

In terms of checking the continued validity of PD A1s as receiving countries, only some Member States indicated that this happens on a regular basis and through established processes, whereas in other countries represented in the PLD, checks are carried out on a needs-based approach. Countries where more systematic verification processes are in place include Spain and Belgium. In **Spain**, once incoming postings are notified, checks are carried out regularly by the labour inspectorate through social security databases to verify there are no irregularities (e.g. posted employees already living in Spain). In **Belgium**, the International Service unit within the social security institution has an explicit obligation to check at least 600 incoming PD A1s per year. While conducted manually for an extensive period of time, the process is now largely automated through the use of AI, which has improved the quality of the verification process as the algorithm is able to carry out more thorough checks to better identify suspicious cases, to be then shared with case handlers on a monthly basis. As a result of these checks, in 2023 and 2024 Belgium requested 141 and 91 PD A1s to be withdrawn, respectively.

Conversely, examples of receiving countries where checks are only conducted on an ad hoc basis, and through more informal processes, include **Finland**. When the conditions for PD A1s are no longer met, the Member State that issued the certificate is contacted with a formal request to review the concerned PD A1 via EESSI. However, in instances where there are no responses to formal requests, more informal avenues are sought, for example by reaching out to known contact persons in the sending country via email, with the EESSI identifier being used to facilitate the verification process. In **Norway**, reviews are conducted manually and only in cases where the information included in PD A1s is unclear or incomplete. In **Slovenia**, ad hoc requests for clarification are sent through IMI.

Approaches to tackling false or fraudulent PD A1 forms vary considerably across Member States as do interpretations of the conciliation procedure. While cooperation between authorities is widely seen as essential (e.g. AT, DE, FR), its effectiveness often depends on the willingness and capacity of other countries to engage, making the handling of fraudulent cases uneven and challenging.

Several countries highlighted practical difficulties in tackling false PD A1s. In France, when false PD A1s are identified during inspections, the relevant social insurance institution in the sending country is contacted. However, enforcement remains challenging as companies involved in fraudulent practices often cease to operate or disappear before cases can be tackled. **Germany** follows a more structured approach in cases of false PD A1s in



line with the CJEU judgment in the case of *Altun*.¹¹⁹ When a false PD A1 is detected, prosecutors are notified and the sending Member State is asked to verify compliance with the posting conditions on their side. If no response is received, a reminder is sent with a clear deadline for providing information. Should this deadline pass with no response, a second reminder is issued stating that, in the absence of cooperation the PD A1 will be considered invalid by German authorities and social contributions will be collected. German authorities consider this two-step approach as a form of dialogue and conciliation. In **Austria**, the general approach is to prioritise close cooperation with cross-border partners and social security institutions, although it reports persistent challenges in ensuring collaboration is meaningful and conducive to positive outcomes in handling difficult cases. By contrast, in **Slovakia**, national legislation does not explicitly address false PD A1s, and such certificates are not considered technically illegal under domestic law.

As PD A1s are perceived to be generally easy to forge due to being simple forms that can be altered, the increased use of **digitalisation was identified as a potential avenue to tackle and prevent the use of false certificates**. In particular, there was consensus among PLD participants that a more systematic use of EESSI could facilitate verification by allowing authorities to more easily confirm whether a PD A1 is genuine. At the same time, some Member States pointed out practical barriers to digitalisation, including the large volume of supporting documents required to assess the validity of PD A1s which makes it difficult to digitalise the procedure and leaves many countries to still heavily rely on paperwork. **Slovakia**, for example, reported that conciliation procedures often still involve receiving boxes of printed documents.

Another avenue that was mentioned is **concerted and joint inspections** (CJIs), as supported by ELA. While deemed useful by several participating countries (e.g. ES, NL, SK) to address complex cases, their effectiveness is hampered by the time-consuming nature of the process as significant preparatory work is required to agree on the scope and focus of the inspections, potentially slowing down the implementation.

Across PLD participating countries, formal EU-level mechanisms for dialogue, conciliation, and mediation are rarely used in practice, with countries generally favouring bilateral or informal cooperation instead. Participants consistently reported that existing procedures are perceived as cumbersome, poorly suited to resolving cases efficiently, and offering limited incentives for engagement.

For instance, the **dialogue and conciliation procedure under the Administrative Commission**¹²⁰ has rarely been used (i.e. around 2-3 cases per year when it was first set up, with no cases in the last 7-8 years). Participants attributed this limited use to the fact that the formal procedure is not seen as conducive to reaching solutions. Instead, countries either prefer to cooperate bilaterally, sometimes also to avoid drawing attention to potential weaknesses in their own systems and procedures. As such, no PLD participants indicated to have any direct experience with the dialogue and conciliation procedure, as the principle of cooperation and mutual trust is generally preferred, with institutions being more interested in solving issues rather than escalating them through formal processes.

At the same time, participating countries largely agreed that not being able to formally challenge the validity of PD A1s within their national systems results in significant barriers, often leading social security institutions to drop cases if the sending State does not cooperate. Despite efforts to cooperate with/gather relevant information from the sending State (e.g. BE, ES, FI), cases are typically closed when responses are lacking or insufficient in nature, as no further corrective avenue remains.

Similarly, **ELA's mediation procedure** is rarely used. Designed as a voluntary procedure, it requires both countries involved to agree to the mediation and select a mediator from a roster of nationally nominated experts.

¹¹⁹ C-359/16 - *Altun and Others*, ECLI:EU:C:2018:63.

¹²⁰ Decision No. A1 of 12.06. 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provisions of benefits under Regulation (EC) 883/2004, C 106, 24/04/2010.



However, PLD participants noted that there is little incentive to use this procedure as resources within social security institutions are limited and therefore a more informal approach (i.e. bilateral cooperation) is generally preferred as perceived to be more effective.

Conversely, **bilateral agreements** were highlighted as a helpful tool for ensuring more productive and sustained cooperation. Such agreements typically facilitate regular information exchange, joint inspections, and clear commitments for all parties to respond swiftly to data requests.

Box 11. Bilateral agreements

Examples of bilateral agreements shared during the PLDs include the following:

- ▶ Bilateral agreement on social security between **Portugal, Spain, and France**, allowing these countries to conduct regular inspections of postings, at the provincial level (particularly in border regions). These checks primarily target posted Portuguese workers who tend to work in high-risk sectors (i.e. construction).
- ▶ Bilateral agreement between the **Spanish** labour inspectorate, the **French** authority responsible for checking PD A1s, and the French Public Employment Service (France Travail), allowing for ongoing exchanges and cooperation. As part of the bilateral agreement, Spanish authorities receive lists of individuals to check in their databases, or a list of characteristics that may be indicative of fraudulent behaviour, to better identify companies/individuals who may be involved in bogus posting.

Recovery of benefits seems to present less challenges for the participating countries than offsetting social security contributions. For instance, **Norway** makes use of EESSI to recover benefits, although it requires close cooperation with the receiving State. Retroactively transferring contributions from one social security institution in one Member State to another institution in a different country, in instances where posting does not actually apply, can be difficult.

In terms of offsetting social security contributions, a discussion ensued around whether these would need to be paid back to the employer first, or whether contributions could be directly paid to the relevant country. **Norway** noted that, if social security contributions had been unduly paid to the Norwegian system, it would be possible for Norway to communicate with the country they are owed to through EESSI. However, not all countries are aware of the possibility of using EESSI for this purpose. As a result, in practice, contributions are often paid back to the employers. For some countries, social security institutions cannot hold an official “creditor” status – contributions that were unduly paid in a country need to be paid back to the employer rather than directly transferred to another social security institution. However, this makes the process lengthy and complex, with some States currently exploring options for simplification. For example, **the Netherlands** is working with **Poland** on a case of bogus posting to explore whether it would be possible for Poland to hold off from paying back contributions to employers, and transfer payments that were due to the Netherlands in the past directly to the Dutch social security institute.

Regardless of the approach, participating countries agreed that the priority remains to ensure that workers are not damaged by the potentially fraudulent behaviours of their employers. For example, in the case of a false posting from **Spain**, the general approach implies that the company would be charged with fraud, with social security contributions being kept (on the basis that undue payment was done with fraudulent intention) and the employer still being obliged to pay contributions in the country where these should have been paid in the first place. Nevertheless, employees are not damaged if actual work has been performed. In such cases, the employer would be asked to pay the contributions if these were actually due, and the Spanish social security institution would still allow employees to accrue social security entitlements (unless fraud is also on the side of the employee, i.e. no work was done).



Box 12. Judicial proceedings in Austria

Austria shared an example of a judicial proceeding related to posting. During an inspection conducted by the Austrian financial police, FinPol, it was discovered that two truck drivers were working for a company based in Latvia. However, no posting notification had been made, nor were the drivers in possession of their PD A1 certificate. As no security deposit could be imposed and it was not possible to contact the responsible Latvian employer, the truck used by the workers to carry out their work was seized. The Latvian company claimed that the seizure was unlawful because criminal prosecution and enforcement within the EU are guaranteed by mutual legal assistance in administrative criminal proceedings. However, courts decided that the measures taken were justified and FinPol acted according to the relevant legislation.

7.2 Sanctions and penalties for bogus postings

Introduction

When bogus posting is detected, if the worker is still in the receiving Member State, **the obvious legal consequence is withdrawal of the PD A1 certificate and the application of the *lex loci laboris* principle**, from the day posting conditions were not or are no longer met (hence with an *ex tunc* or *ex nunc* effect). Bogus posting may also be detected after the posted period and the worker has either returned to the sending country or has concluded an employment agreement with a receiving company. In either case, social security contributions might have to be paid to the receiving Member State retroactively (discussed under Session 6).

Consequences for and/or sanctions to the worker or the employer are also possible. These could take the form of:

- ▶ administrative law sanctions (e.g., a fine or a ban on entering the receiving Member State within a certain time period)
- ▶ labour law consequences (e.g. reinstatement)
- ▶ criminal law sanctions (e.g. fines or imprisonment) in instances of bogus posting leading to a criminal offence.

However, Member States are limited when imposing sanctions, as minimum requirements must be met. According to the principle of equivalence and effectiveness, national procedures and remedies should not be less favourable than those for similar actions based on domestic (national) law, and should not make the exercise of EU law virtually impossible or excessively difficult.¹²¹ Additionally, maximum requirements also apply to ensure that any measure taken for the purpose of enforcement complies with the general rules of EU law, including the principle of free movement of persons and services.¹²²

Sanctions must be not only effective and non-discriminatory (e.g., towards posted workers and their employers) but also proportionate. This means that they must follow a legitimate aim, which is in the public interest and should not be excessive (i.e., not go beyond what is strictly necessary).¹²³ This applies at a general level, in terms of national rules on sanctions, as well as at the individual level, in relation to sanctions applied in

¹²¹ Jorens Y. 2022, p. 440.

¹²² Ibid., p. 442.

¹²³ See also Article 20 Directive 2014/67/EU.



concrete cases. For example, the European Commission instigated an infringement procedure against Belgium, and the CJEU deemed Belgian legislation not compatible with EU law, when Belgium unilaterally took several legislative measures to fight abuses.¹²⁴ In short, Belgium deemed that where national courts, a public social security institution, or a social inspector found an abuse of the Social Security Coordination Regulations (in case of letterbox companies in particular), the employed or self-employed posted worker concerned would have to be subject to the Belgian social security legislation, from the first day on which the conditions for its application were satisfied.¹²⁵ This approach was considered by both the Commission and CJEU to be against the above-mentioned requirement for a dialogue and conciliation procedure. The Commission instigated an infringement procedure, and the CJEU found this piece of Belgian legislation not compatible with EU law.¹²⁶

Dialogue

In most countries, administrative sanctions stand out as the most common, although other sanctions are foreseen (and implemented) as well. No differentiation is made in terms of sanctions or penalties for workers from other EU countries or third-country nationals based on the principle of equal treatment.

For instance, **Austria** imposes fines of up to EUR 50,000 for administrative offences (for bogus posting and illegal employment of TCNs). Criminal sanctions (fines or imprisonment) are also possible if the posting is connected to trafficking or illegal employment. For third country nationals, sanctions might also be cumulative based on the *Act Governing the Employment of Foreign Nationals. (AuslBG)*. In **Slovakia**, while false PD A1s seem not to be technically illegal and these cases are not prosecuted in criminal courts, administrative sanctions are foreseen for cases of illegal employment, ranging from EUR 2,000 to EUR 250,000. In **France**, both criminal and civil courts can be involved and fines be imposed. In **Malta**, fines under social security law apply, while serious fraud cases may lead to potential prosecution through DIER or the Police Economic Crimes Unit. In **Poland**, fines of up to EUR 10,000 can be imposed by the court upon the application of the Control Inspector (ZUS). The Social Security Institute can also inform the police and/or labour authorities in cases where criminal courts need to be involved.

In **Italy**, sanctions include administrative fines for failing to store posting documents or designate an Italian representative, and possible criminal liability for both the fake posting entity and the client company under Legislative Decree 231/2001. The penalties are applied by National Labour Inspectorate (INL) and other authorities. Sanctions may include administrative sanctions, such as fines for bogus posting (from EUR 60 to EUR 72 per worker per day of unlawful employment, with amounts in the range of EUR 5,000 to EUR 50,000 being possible), fines for documentation failures (from EUR 600 to EUR 3,600 per worker for failing to store posting-related documents and from EUR 2,400 to EUR 7,200 for failing to designate an Italian representative), fines for information transfer failures (from EUR 180 to EUR 600 or from EUR 500 to EUR 1,500 per worker, depending on the obligation violated). Criminal sanctions may comprise imprisonment (imprisonment for up to one month is an alternative to the administrative fine for bogus posting), corporate liability (based on Legislative Decree 231/2001, if the offence is committed by a person subject to management or supervision, or even by a top management person). In **the Netherlands**, fines between 5% and 100% of unpaid social security contributions are foreseen for bogus posting. While criminal courts can also be involved, proving the intent in fraud cases remains very difficult.

In **Belgium**, administrative fines can be imposed by labour inspectors to companies established in the country. For foreign employers or self-employed people coming to work to Belgium, if they do not comply with the obligation to register on the Limosa portal, fines can also be issued. In 2024, the labour inspectorate in **Portugal** carried out 295 inspections, which resulted in 34 warnings for infringements and 100 violations being identified. Sanctions can also include businesses not being allowed to apply for public contracts for 2 years. In **Norway**, evasions of social security contributions are mostly tackled through administrative sanctions amounting to 30% of the amount that is

¹²⁴ Such as the provisions of Articles 22 to 25 of the Programme Law of 27 December 2012, Belgian Official Journal, 31.12.2012.

¹²⁵ Houwerzijl M., Verschueren H., 2024, p. 243.

¹²⁶ C-356/15 - *Commission v Belgium*, EU:C:2018:555.



due. The **Slovenian** labour inspectorate imposes both administrative measures and minor offence fines (from EUR 6,000 to EUR 60,000 if posting conditions are not met, or EUR 2,000 to EUR 20,000 if there is no notification of posting, or if the notification is incomplete, or services are not in accordance with the submitted notification, or relevant documentation is not kept or submitted upon request). If it is established that a service is being carried out contrary to the posting conditions or to the data stated in the PD A1 certificate, further provision of services by the foreign employer may be prohibited.

In **Spain**, administrative sanctions are proposed by labour inspectors and implemented by labour authorities. Administrative sanctions for bogus posting usually amount to between EUR 7,500 and EUR 225,000. Criminal sanctions are also possible in exceptional cases, with the involvement of public prosecutors depending on the volume of social security contributions that have not been paid and the damage to the worker concerned. In case of subcontracting, the principle of joint liability applies: if a company subcontracts another company that is in breach of existing rules, both companies are jointly liable in relation to social security debts for the term of the subcontracting. Specific sanctions exist for employers posting third-country nationals who do not have valid work permits in the sending country, and therefore have no permit to work in Spain, with amounts ranging from EUR 10,001 to EUR 100,000 per employee. For self-employed third country nationals with no work permit, the breach is classified as “serious” with a sanction ranging from EUR 501 to EUR 10,000.

Lastly, an interesting example was shared by **Ireland**, where, aside from fixed payment notices, companies that have committed violations are usually mentioned in the annual reports of the Workplace Relations Commission (WRC). This is seen as an important deterrent, as reputational damage can be effective in smaller countries such as Ireland.

Key take-aways: mechanisms to investigate breaches and applying sanctions

- ▶ As a rule, checks in the sending Member State are not carried out unless breaches are detected or issues are raised by the receiving country. Only some countries foresee regular checks, especially for known letterbox companies or companies where a disproportionate share of workers are posted.
- ▶ Many countries rely on the employer's obligation to communicate any changes in posting situations.
- ▶ Validity of PD A1 certificates is more diligently checked in receiving Member States.
- ▶ Many countries rely on digitalised communication when verifying ongoing postings, but some may still engage with paperwork.
- ▶ Sincere cooperation between the countries involved remains crucial. This may involve engaging in concerted and joint inspections, direct dialogue and conciliation procedures, or concluding bilateral agreements. The possibility of participating in dialogue and conciliation procedures under the Administrative Commission's Decision A1 and ELA mediations is hardly taken up as direct communication between relevant countries is generally preferred as it is perceived as faster and less costly compared to institutionalised arrangements.
- ▶ One of the obstacles hindering good cooperation remains the use of different communication systems between institutions within the same country, as social security institutions use EESSI and labour inspectorates rely on IMI.
- ▶ Recovering benefits presents less challenges than offsetting social security contributions. Whether the latter would need to be paid back to the employer first, or whether these can be paid to the relevant country directly, remains a disputed question. The data exchange related to offsetting or recovery must take place via EESSI (with the transfer of funds via banking operations outside of EESSI).



- Administrative sanctions, applied non-discriminately and proportionately, stand out as the most common remedy for bogus postings. Only rarely are civil or criminal sanctions applied.

8.0 Possible improvements in posting procedures and cross-border cooperation

Introduction

Ensuring good cooperation among competent authorities, both within an individual country and between the sending and the receiving EU Member States is crucial.

Several opportunities for cooperation already exist, in particular to promote exchange of data and information. Upon issuance of PD A1, the sending Member State should send a 'Notification of Posting' (SED A009 within LA_BUC_04) via the EESSI system.¹²⁷ Communication and data sharing are emphasised also by decisions of the Administrative Commission for the Coordination of Social Security Systems;¹²⁸ Practical Guide on applicable legislation;¹²⁹ cooperation among labour (and social) inspectors; and cooperation with the European Labour Authority (ELA).

Next to the Single Digital Gateway' Regulation,¹³⁰ other initiatives to promote cooperation are currently being developed. These include the Once-Only Technical System¹³¹ related to the European Digital Identity (EUDI) framework;¹³² the European Blockchain Services Infrastructure;¹³³ and the European Social Security Pass (ESSPASS).¹³⁴ The latter should be stored in the EUDI wallet and allow for real-time digital verification, also by labour (and social) inspectorates, while enabling personal data control of the persons involved.¹³⁵ Moreover, a Proposal for a Regulation on a public interface connected to the Internal Market Information System for the declaration of posting of workers and amending Regulation (EU) No 1024/2012 is currently being discussed.¹³⁶

Beyond tools and initiatives, ensuring better alignment between tax, labour and social security laws and regulations might be a potential avenue to facilitate the monitoring of posting.

¹²⁷ See https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/digitalisation-social-security-coordination/electronic-exchange-social-security-information-eesi_en

¹²⁸ Decision No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State, (2010/C 106/02).

¹²⁹ European Commission (2013), Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland.

¹³⁰ See: <https://eur-lex.europa.eu/eli/reg/2018/1724/oj/eng>

¹³¹ When completing an online procedure, citizens will be able to give their explicit request to retrieve evidence from a competent authority in another Member State. The explicit request triggers the retrieval of evidence from competent authorities across many different sectors and should enable easier communication between workers, employers and administrations, <https://ec.europa.eu/digital-building-blocks/sites/spaces/OOTS/pages/610468075/About+OOTS>

¹³² See: <https://digital-strategy.ec.europa.eu/en/policies/eudi-regulation>

¹³³ See: <https://ec.europa.eu/digital-building-blocks/sites/spaces/EBSI/pages/447687044/Home>

¹³⁴ See: https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/eu-social-security-coordination/digitalisation-social-security-coordination/european-social-security-pass_en

¹³⁵ The Commission adopted a proposal for a Regulation in November 2024 on a public interface connected to the Internal Market Information System for the declaration of posting of workers. Communication: The Single Market: our European home market in an uncertain world, A Strategy for making the Single Market simple, seamless and strong, Brussels, 21.5.2025, COM(2025) 500 final. EssPass should link institutions (now linked among themselves with EESSI) with individuals. ESSPASS could show PDA1 certificate (or request to issue one) on the worker's phone. See [ESSPASS](#).

¹³⁶ [COM/2024/531 final](#).



Dialogue

Several participating countries (e.g. BE, ES, FI, NO, SI) expressly highlighted the importance of cooperation. However, challenges remain. Receiving social security institutions regularly reach out to their sister organisations in sending countries. This usually happens through different modalities.

Overall, EESSI is used regularly by all participating countries representing social security institutions (e.g. in **Austria** and **Malta**, all postings (certified by PD A1s) are communicated to receiving Member States via EESSI as the system enables authorities to exchange data securely), while the use of IMI is more common among representatives from labour authorities (e.g. labour inspectorate in **Italy**, Labour Ministry in **Slovakia**).

Regardless of the chosen approach, participants report that the level of responsiveness varies greatly across countries, with some either not replying to requests or only providing partial/insufficiently detailed information. However, participants underlined that, for EESSI to be truly effective, there is a strong need for it to be actively used by all EU Member States (both in terms of notifying postings and replying to requests from other countries).

For instance, in **Austria**, EESSI is used very effectively and other Member States are required to share documents via EESSI. Also in **Poland** EESSI is used extensively, including to extract data that can be used by inspectors to carry out inspections. In **Belgium**, the National Institute of Social Security for Self-Employed primarily relies on EESSI, with IMI being used if additional information is required. In **Portugal**, the Authority for Working Conditions (ACT) (i.e. labour inspectorate) makes use of IMI only, as EESSI is exclusively used by the social security institution. If questions submitted via IMI cover social security-related issues, then these are passed over to the relevant institution by ACT. **Finland** and **Norway** use EESSI, in conjunction with the Practical Guide and Decision A1, as does **Slovenia**.

The Practical Guide was often defined as the key guidance document for social security institutions across Europe, as it not only provides clear guidance on the applicable legislation, but it also includes helpful examples from the CJEU case law. In some countries (e.g. DE), the Practical Guide has been embedded in internal guidance documents. Other examples of tools used include Decision A1, which was said to be used by most participating countries.

Moreover, **Slovakia** mentioned making use of the Checklist for Genuine Posting to develop the Labour Ministry's own methodology to guide inspections. ESSPASS was briefly discussed, with participants sharing overall positive feedback and noting that the tool will likely ease the verification process for receiving Member States and make inspections easier, allowing for real-time verification of PD A1s.

Lastly, several PLD participants (e.g. AT, ES, IT, FI, NO) highlighted the key role played by the European Commission and ELA in promoting cooperation between Member States, both through the organisation of events and training sessions and through existing working structures. **Spain** noted the need to put in place a functional communication channel between labour inspectorates and social security institutions, given that while IMI interconnects inspection services and EESSI social security institutions, cross-border exchanges between these two types of authorities may be difficult to establish. In their experience, communication with other Member States is usually handled via IMI, through email exchanges with the national contact points of countries with which a bilateral agreement exists, or via the Platform for Fraud and Error which also provides a space for cooperation. **Austria** highlighted their involvement in the European Platform tackling undeclared work as well as the European Platform to combat cross-border social security fraud and error as helpful to gain useful contacts from other institutions across Europe. **Finland** and **Slovenia** reported having taken advantage of ELA's support to organise study visits.

Beyond cooperation among Member States, inter-institutional collaboration between public authorities within the same Member State was also indicated as an outstanding issue by several participating countries to the PLDs



(e.g. FI, IT, IE). For example, **Italy** noted that, when they act as a sending country, the labour inspectorate has to trust that the social security institution has carried out its due diligence. They can reach out to chambers of commerce to verify that companies are officially registered, but this is not necessarily enough proof that substantial activity is taking place in Italy. Inspections can be used but are generally seen by participating Member States as difficult to implement as they tend to be very time consuming. **Ireland** also noted that internal cooperation can be a challenge when processing PD A1 requests.

Key take-away: possible improvements

- ▶ Member States shall agree on a uniform communication system to be used internally and cross-border. For the latter, EESSI should be preferred, since it is a more structured communication tool, and sending Member States have to notify all postings to the receiving Member States via the respective EESSI workflow..
- ▶ A new Practical Guide on applicable legislation shall be published. It should be clearly structured and regularly updated.
- ▶ ESSPASS should be introduced and provide more reliable tool for verifying whether posting conditions are met.
- ▶ ELA could be used for more concerted action, from joint inspections, to study visits and additional peer learning dialogues or other forms of in-person or online meetings of national experts. Mediation procedure could be made less demanding for the participating countries.
- ▶ Member states shall agree on uniform definitions and interpretation of posting conditions and multi-state activities. They should rely on digitalised and partially automated procedures, limiting personal case-handling to more demanding situations.
- ▶ Cross-border cooperation between sending and receiving Member States shall be considerably enhanced, with all countries obliged to cooperate sincerely. The same goes for relevant institutions within a respective country.

9.0 Lessons learned during the two PLDs

During two PLDs , participants agreed on specific actions to test in their home countries, following the in-person meetings at ELA's headquarters in Bratislava. The section below provides a summary of the proposed actions and highlights key developments and/or reflections shared by PLD participants on key steps taken or challenges encountered when implementing their proposed action. The actions have been grouped by theme, depending on the main focus of the proposed approach to tackling bogus posting under social security coordination.

Strengthening cooperation

The PLD meetings revealed substantial room for improvement in terms of collaboration between EU Member States, particularly in terms of information and data sharing. To this end, the following countries proposed testing a number of actions to strengthen cooperation across borders.

The **Netherlands** proposed to strengthen cooperation with Poland to facilitate the exchange of information on cases of posting raising concerns around the applicable social security rules. To work towards implementing this action, the Netherlands put together a proposal to organise an in-person study visit to Poland, with ELA's support, for representatives from social security institutions from both countries to discuss concrete cases, with a focus on the following key themes:



- ▶ Approaches to compliance with the posting condition of having to be covered by the social security system of the sending State at least one month before the posting, due to interpretative differences across countries. For example, in the Netherlands this is assessed by looking at the employment situation of the worker or their place of residence. However, this is also contentious as countries have different definitions of what they consider as “residence”. The Netherlands regularly identifies employees who have been living and working in the country for years but remain insured in Poland based on (suspected chain) posting. As such, posting appears to be used structurally in situations that are actually long-term.
- ▶ Approaches to cases of Ukrainian employees who live in the Netherlands but, after a short stay in Poland, are considered seconded and insured in the latter. This raises questions on the application of the prior insurance rules for cases where there has not been any previous work or actual residence in Poland.
- ▶ The status of uninsured third-country nationals undertaking postings in the Netherlands via Poland, where PD A1s should be withdrawn and national law applied. In the Netherlands, as these individuals would be considered illegally employed, they would have no insurance coverage through the Dutch social security system.

France proposed to focus on implementing a bilateral agreement with Spain to facilitate data exchange in support for inspections. More specifically, the bilateral agreement was concluded on 25 September 2025 between Spain (OITS) and France’s national health insurance fund Urssaf, following the model of previous agreements stipulated with other countries (BE, ES, IT, LU, PL, PT), with the aim to promote the exchange of information on the determination of the applicable legislation, support the sharing of good practices on control and verification procedures, and improve cooperation by responding quickly to requests for cases involving France and Spain, including by implementing joint inspection on companies where relevant. Based on this bilateral agreement, over 20 inspections have taken place and information exchange between French and Spanish social security institutions has been progressively improving, also leading to greater level of responsiveness to requests.

Austria strengthened its bilateral cooperation with Serbia through the development of the Electronic Data Exchange Austria-Serbia (EDEAS) system. The system currently includes information on postings, but aims to broaden its scope to cover data on pensions and health insurance coverage.

Slovenia successfully applied to obtain support from ELA to organise a study visit to Belgium to learn about the Belgian approach to PD A1 issuing and withdrawals. In addition, the Slovenian labour inspectorate will be hosting a Belgian labour inspector under ELA’s efforts to support capacity building and training activities for national authorities. For 10 working days, the Belgian inspector will join the Slovenian labour inspectorate to observe Slovenian experts when carrying out inspections. Based on the ongoing cooperation with Belgium, concrete cases for joint inspections will be identified to further strengthen collaboration in the coming months and years.

Increasing the take-up and use of existing tools

The PLDs provided a space for participants to identify opportunities to further increase the use of existing EU-level tools and/or potentially take-up digital solutions implemented in other countries, to improve monitoring efforts. The following countries proposed testing a number of actions to strengthen the use of existing (digital) tools.

Malta committed to exploring the possibility of more effectively embedding the EESSI system within national procedures governing the issuance and lifecycle management of PD A1s, with the objective to reinforce ex-ante control measures by establishing a secure, direct and reliable interface between issued PD A1s and the EESSI platform while, in parallel, providing labour inspectorates with controlled online access to key PD A1 information. To date, a technical concept note was prepared to outline a proposed approach and a pilot was planned for 2026.

Austria proposed to carry out research on a possible warning system to tackle cases of double insurance, with a view to compare information available through EESSI with information present in existing national databases. This



action has the objective to support the Austrian social insurance institution to gain a better understanding of the extent of the issue.

Poland is taking action to explore the potential applicability of a QR code-based verification system to check the validity of PD A1 certificates, based on the approach currently in place in Slovenia. The adoption of this digital tool may speed up the verification process by allowing on-the-spot checks by labour inspectors, road transport inspectors, as well as competent authorities in other Member States.

Belgium is investigating the possibility of manually checking retroactive PD A1 requests and consulting other countries with relevant experience, including by expanding the team currently working on verifying compliance with posting conditions. An extra staff member will be hired in the second half of 2026 to be specifically trained to identify potential instances of bogus posting.

Spain is exploring the possibility of reviewing ex-ante checks carried out by local/national authorities to issue PD A1 certificates. These checks remain difficult as the labour inspectorate in Spain does not have access to EESSI and no data mining is possible on the basis of such tool. As such, the labour inspectorate needs to rely on information provided by the social security institution. Consideration is being given to the possibility of developing a shared internal information system.

Portugal took concrete steps to make better use of data from posting notifications, with the objective of transforming this data, traditionally used for declarative purposes, into an active risk analysis tool aimed at screening relevant situations and prioritising inspection interventions. The assumption was that, by further analysing and disaggregating this information, the data would allow the labour inspectorate to systematically identify recurring patterns, repeated behaviours and relevant anomalies, and therefore better support administrative cross-checks and strengthen the strategic planning of inspection activities. Notifications of the posting of workers from Portugal to another Member State, communicated to ACT between 01/01/2025 and 19/03/2026, were analysed. The analysis revealed clear patterns in terms of the geographical concentration and temporal variation of postings; the predominance of certain activities/sectors and certain nationalities of posted workers.

Fostering knowledge-sharing and cooperation

The PLD meetings identified information and knowledge sharing as a key area for improvement across several participating Member States. The following countries proposed testing a number of actions to further disseminate knowledge on postings among relevant national institutions, ultimately also contributing to improving institutional cooperation in posting situations.

Italy proposed to organise a training session for labour inspectors in the second half of 2026 to share knowledge on bogus posting from a social security perspective. The training is set to take place online to promote the engagement of labour inspectors from across Italy and ensure better reach.

Germany planned to implement a series of workshops in 2026, to train customs officers on bogus posting and provide them with an overview of options for administrative assistance, to improve workflows and cross-border cooperation. The workshops will act as a space for participants to discuss practical cases and gain a better understanding of IMI as a tool for information sharing, potentially leading to greater use.

Slovakia organised an online training event to disseminate knowledge on procedures and existing frameworks useful to determine the applicable legislation in posting situations. The event, which gathered over 140 participants from *Všeobecná zdravotná poisťovňa* (State-owned and largest health insurance company in Slovakia) headquarters and its branches across the country, was an opportunity to clarify the meaning of key concepts, including the definition of posting of workers, the definition of multi-state activities, and the *lex loci laboris* principle.



In cooperation with the Law Faculty of the University of Ljubljana and the Labour Law and Social Security Association, the labour inspectorate in **Slovenia** organised a meeting in April 2026 focused on bogus posting. The event represented an opportunity for relevant institutions (labour inspectorates, social security institutions, labour mobility sector at the ministry of labour, and tax office) to come together to enhance cooperation on issues related to posting. At the event, several legislative and practical proposals were discussed, including the possibility of establishing a permanent mixed enforcement group.

In the follow-up to the PLD, **Finland's** Centre for Pensions (ETK) started exploring the possibility of enhancing internal cooperation with the labour authority to tackle potential cases of letterbox companies. Currently, cooperation between ETK and the labour authority is limited to joint inspections to verify whether employers comply with their legal obligation to insure employees and pay pension contributions. When it comes to posting and letterbox companies, collaboration with the labour authority is only happening in ad hoc cases. Improving cooperation between public authorities (labour authority, tax authority etc.), including data sharing, could help tackling the issue of letter box companies more effectively.

Ireland is considering organising an information session for social security inspectors and improving cooperation around posting within the Department of Social Protection, e.g. including the skills to identify letter box companies. A number of steps were already taken, including sharing learnings from the PLD meetings with Area Managers and informing inspectors about the key elements to be checked in PD A1 certificates, to ensure they are adequately prepared for on-site posted workers. In parallel, the Department of Social Protection is liaising with the Workplace Relations Committee (WRC) to strengthen cooperation and develop training material.

Norway presented 'Project Posting', a six-week training project for six case workers from the social security administration carried out in early spring 2026 and focusing on discussing posting with a focus on Articles 12(1) and 16 of Regulation (EC) No 883/2004. The training covered both theoretical frameworks and legal standards, as well as how to apply legal principles in practice when handling cases, with the aim of reducing processing timelines and increasing the quality of PD A1s. Suggestions were made to publish recurring case-related questions and related answers for case workers to have better access to immediate support, and to further streamline processes. A similar training project is planned to be implemented in late spring 2026 with eight participants.

Lastly, **Belgium** is also planning a training session for staff working for social security institutions to ensure all case handlers are able to recognise problematic cases where bogus posting may be taking place.

10.0 Reflections and suggestions

Building on the experience of the participant countries during the PLDs and the tested actions, a number of key lessons have been identified. These lessons, drawn from the practical experiences of the participant countries are important for other EU Member States to consider. This section presents suggestions for national authorities and discusses how ELA can further support Member States in addressing bogus posting under social security rules.

Suggestions for national authorities

- The participants involved in the two PLDs identified **enhanced cooperation between Member States** as a key priority. To this end, relevant national-level institutions should increase their efforts to cooperate with their counterparts across Europe, by making use of existing tools (e.g. IMI and EESSI) and more promptly responding to requests for information.



- ▶ Member States should also implement **targeted actions to assess existing legal frameworks and concepts, the prevalence and trends relating to bogus posting and the methods and tools applied to prevent, detect and address bogus posting** in their country. Critical in this regard is **fostering inter-institutional cooperation and data exchange** between tax, social security and labour protection authorities nationally and Europe-wide.
- ▶ Taking inspiration from the actions and projects put in place by PLD participants which proved to trigger immediate and practical results, PLD participants have identified for a set of small scale actions for national authorities to consider, including:
 - Organising bilateral consultations between different competent authorities (e.g. social security, labour, tax) to identify possible future joint actions to prevent bogus posting;
 - Organising information sessions involving representatives from social security institutions and inspection services at the management level, to enhance cooperation;
 - Implementing awareness-raising campaigns on social security and its cross-border application for posting employers, posted workers and social partners representing them;
 - Identifying and sharing best practices related to ex-ante procedures and ex-post checklists to avoid bogus posting;
 - Improving the use of EESSI for all social security coordination-related issues, including the recovery of benefits and offsetting of social security contributions;
 - Organising practical workshops with social partners;
 - Supporting the implementation of joint (cross-border) inspections with other competent national enforcement authorities;
 - Contributing towards an updated and structured Practical Guide on applicable social security legislation in cross-border situations, including posting;
- ▶ National authorities should support the **organisation of national training and workshops** on genuine posting and its deviations in practice, involving representatives from the different competent national institutions (social security, labour, tax, judiciary) as a key priority to further developing cross-border institutional cooperation.
- ▶ **Cross-border cooperation** between sending and receiving Member States should be considerably enhanced, with all countries obliged to cooperate sincerely.

Suggestions for ELA

PLD participants highlighted the need for ELA to continue to support national authorities to improve the effectiveness of procedures and approaches to tackle bogus posting and enhance cooperation, including by:

- ▶ Encouraging and supporting Member States to implement more concerted action, from joint inspections, to study visits;
- ▶ Organising additional Peer Learning Dialogues or other forms of in-person or online meetings to bring together national experts and provide opportunities for networking and cooperation-building;
- ▶ Promoting the revised simplified ELA mediation procedure to ensure its application by the participating countries;



- ▶ Further facilitating the organisation of training sessions for national social security, labour and tax authorities responsible for detecting and tackling bogus posting, also to foster the use of a shared terminology and the development of a common understanding of posting conditions and multi-state activities;
- ▶ Providing practical support to increase the knowledge and skills of national authorities – focusing on successful evidence-based practices to detect and tackle bogus posting in the different economic sectors – and disseminate good practices across Member States;
- ▶ Promoting examples of cross-border bilateral agreements relevant for tackling cross-border bogus posting¹³⁷;
- ▶ Based on collected good practice examples, providing input for a revised Posting Guide (Practical Guide on the applicable legislation in the EU, EEA and CH), prepared by the Administrative Commission for the coordination of social security systems;
- ▶ Consider developing a database of relevant CJEU cases on posting to further guide the implementation of the existing legal frameworks;
- ▶ Organising awareness-raising campaigns on genuine posting, including through the production of supporting guidance materials (e.g. toolkits) and making use of existing initiatives (e.g. Posting 360);
- ▶ Promoting increased cooperation with the European Commission on standard interpretation of posting conditions, preferably under free movement of services, social security coordination and tax rules.

¹³⁷ European Labour Authority (2025). Bilateral and multilateral agreements in the area of EU labour mobility. Available at: <https://www.ela.europa.eu/en/publications/bilateral-and-multilateral-agreements-area-eu-labour-mobility>



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