



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 126/18**  
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Judgment in Case C-527/16  
Alpenrind and Others

**A posted worker is covered by the social security system of his place of work if he replaces another posted worker, even if those workers were not posted by the same employer**

*However, an A1 certificate showing the affiliation of the worker to the social security system of the Member State of origin is binding, both on the social security institutions and the court of the Member State in which the work is carried out, except in cases of fraud or abuse, so long as it has not been withdrawn or declared invalid by the Member State of origin*

The Austrian company Alpenrind operates an abattoir in Salzburg. From 2012 to 2014 Alpenrind employed workers posted to Austria by the Hungarian company Martimpex to cut and pack meat. Both before and after that period the work was carried out by the workers of another Hungarian company, Martin-Meat.

For approximately 250 workers posted by Martimpex from 1 February 2012 to 13 December 2013 the Hungarian social security institution issued A1 certificates<sup>1</sup> attesting that the Hungarian social security system applied - some with retroactive effect and some in cases in which the Austrian social security institution<sup>2</sup> had already determined that the workers concerned were subject to compulsory insurance in Austria.

The decision of the Austrian social security institution establishing that the workers were subject to compulsory insurance in Austria was challenged before the Austrian courts.

It is against that background that the Verwaltungsgerichtshof (Upper Administrative Court, Austria)<sup>3</sup> asked the Court of Justice to clarify the EU rules relating to the coordination of social security systems and, in particular, the binding effect of the A1 certificate<sup>4</sup>.

**By its judgment today, the Court holds that an A1 certificate issued by the competent social security institution of a Member State (Hungary in this case) is binding<sup>5</sup> on both the social security institutions and the courts of the Member State in which the activity is carried out (Austria) so long as that certificate has not been withdrawn or declared invalid by the Member State in which it was issued (Hungary<sup>6</sup>).**

**The same applies where, as in the present case, the competent authorities of the two Member States have brought the matter before the Administrative Commission for the Coordination of the Social Security Systems and it has concluded that that certificate was**

<sup>1</sup> Formerly E 101 certificates.

<sup>2</sup> The Salzburger Gebietskrankenkasse (Salzburg Regional Health Insurance Fund, Austria).

<sup>3</sup> The Salzburger Gebietskrankenkasse and the Bundesminister für Arbeit Soziales und Konsumentenschutz (Federal Minister of Labour, Social Affairs and Consumer Protection) brought an appeal before the Verwaltungsgerichtshof.

<sup>4</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1 and corrigendum OJ 2004 L 200, p. 1), as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010 (OJ 2010 L 338, p. 35) and, Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284, p. 1), as amended by Regulation No 1244/2010 (OJ 2009 L 338, p. 35).

<sup>5</sup> Except in cases of fraud or abuse, see case [C-359/16 Altun and Others](#), see also Press Release No [10/18](#).

<sup>6</sup> It is common ground that the certificates at issue were not withdrawn by the competent institution in Hungary or declared invalid by the Hungarian courts.

**incorrectly issued and should be withdrawn.** The Court observes, in that regard, that the role of the Administrative Commission in that context is limited to the reconciliation of the views of the competent authorities of the Member States which brought the matter before it and that the Administrative Commission's conclusions have the status of an opinion.

Furthermore, the Court states that **an A1 certificate may apply with retroactive effect, even though, on the date of issue of that certificate, the competent institution of the Member State in which the work is carried out (Austria) has already decided that the worker concerned is subject to the compulsory insurance of the latter Member State.**

**The Court also held that, in a case in which a worker posted by his employer to carry out work in another Member State is replaced by another worker posted by a different employer, the second worker cannot remain subject to the legislation of the Member State in which his employer usually carries on its activities.**

As a general rule, a worker is subject to the social security system of the Member State in which he pursues his activities, in particular, in order to guarantee the equality of treatment of all persons occupied in the territory of a Member State as effectively as possible.

It is only under certain conditions that the European Union legislature has provided for the possibility for a posted worker to remain subject to the social security system of the Member State in which his employer normally carries on its activities. Thus, the legislature excluded that possibility where a posted worker replaces another person. The Court states that there is such a replacement where a worker posted by his employer to work in another Member State is replaced by a worker posted by another employer.

The fact that the employers of the two workers concerned have their registered office in the same Member State or that they may have personal or organisational links is relevant in that regard.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

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