

# Germany: Myths and facts around the A1 certificate

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## In brief

Should German employers apply for an A1 certificate for their employees on very short business trips within the European Union (EU) and to Switzerland? This concern is arising because from mid-2019, it will be mandatory to apply for these A1 certificates electronically via payroll accounting. However, notwithstanding the introduction of the electronic application procedure, there is no need to apply for such a certificate for every business trip to the EU or Switzerland.

## In detail

### What is the A1 certificate?

The A1 certificate, which also is referred to as the 'certificate of applicable law', confirms that in the case of temporary employment in another EEA State or Switzerland, only the corresponding German regulations apply instead of the social security regulations for that jurisdiction. In general, this certificate preferably should be available at the start of the activity in the other country.

### Is there a de minimis limit in this context?

No, the corresponding European regulations (VO (EG) 883/2004 and VO (EG) 987/2011) do not provide for any de minimis limits. However, according to these regulations, in the case of a very short professional stay in another EEA state or Switzerland, the

application for this certificate may be waived.

### Any exceptions?

The ECJ has already ruled in the case 178/97 'Banks'. Paragraphs 49 to 57 state that "even if it takes place before the beginning of the period in question, it may also be surrendered during that period and even after its expiry." This is followed by the fact that the health insurance funds usually responsible in Germany can issue the A1 certificate retroactively without a time limit being set.

In addition, the European Commission, Directorate-General Employment and Social Affairs, in a communication to the European Commission, stated the following in a case of obstacles to the freedom to provide services due to the lack of an A1 certificate:

"It cannot be ruled out that in some Member States, in the absence of an A1 certificate, an inspection may lead to obstacles when entering a business premises or to official measures such as the immediate collection of social security contributions. In order to prevent such problems, the companies concerned cannot be expected, contrary to the legal situation outlined above, to apply without exception for the A1 certificate prior to a short-term activity abroad or, otherwise, to refrain entirely from such business trips, the necessity of which arises at short notice.

Depending on the specific circumstances, such measures may be regarded as an infringement of national discretion and of the European freedom to provide services.

Restrictions on the freedom to provide services due to lack of A1 certificates should be addressed to the European Commission."

### **What has changed due to the future electronic application procedure according to § 106 SGB IV?**

Nothing. The legal principles described above continue to apply unchanged. The introduction of the electronic application procedure does not mean that it is mandatory to apply for an A1 certificate for every business trip, however short, to another EU country.

### **Are there other aspects to consider?**

Yes, EU law currently contains a number of binding provisions regarding working and employment conditions that apply to posted workers in order to ensure that these rights and working conditions are protected throughout the EU and to avoid 'social dumping,' i.e. undercutting prices on local markets by foreign service providers whose labour standards are lower (EUPWD). Those rules provide that workers

posted to another Member State may rely on a number of central rights that apply in the host Member State, even though they are still employees of the undertaking that posted them and therefore are governed by the law of that Member State. The relevant rights include:

- minimum fee rates
- maximum working hours and minimum rest periods
- minimum paid annual leave
- conditions for the provision of workers by temporary employment agencies
- safety, health, and hygiene at work
- equal treatment for men and women.

To monitor compliance with these requirements, control authorities have been set up in the EU states and Switzerland where employers must register their employees, e.g., before starting a business trip or assembly assignment.

Within the framework of this registration procedure, proof of continued social security in the home country also must be provided. This is done by means of the A1 certificate.

### **The takeaway**

Due to the introduction of the electronic application procedure for issuing the A1 certificate, there is no need to apply for an A1 certificate for every business trip to the EU or Switzerland.

The simplifications described above with regard to the application for the A1 certificate by the caselaw of the European Court of Justice and the statement of the EU Commission continue to apply.

If, due to social security law or other legal or operational requirements, there is an obligation to submit a report or, due to the national implementation of the EU Posting of Workers Directive, an obligation to report, the A1 certificate generally must be applied for before the start of travel.

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## **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact your PwC Global Mobility Services engagement team, or the following professional from our Global Social Security Centre of Excellence:

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