The abuse of EU social security coordination in the context of Posted Workers

Misbrug af EU's koordinering af social sikring i forbindelse med udstationerede arbejdstagere

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Specialet har til formål at analysere EU's koordinering af sociale sikringsordninger med særligt fokus på udstationeret arbejdskraft. Det undersøger, hvordan systemets opbygning muliggør, at virksomheder kan udnytte forskelle mellem medlemsstaternes ordninger gennem konstrueret udstationering af arbejdskraft for at opnå økonomisk fordelagtige vilkår. Analysen omfatter både de gældende regler, der skal modvirke misbrug, og potentielle veje til styrket regulering i fremtiden.

Specialet tager udgangspunkt i forordning (EF) nr. 883/2004 om koordinering af sociale sikringsordninger og gennemførelsesforordning (EF) nr. 987/2009. Fokus rettes særligt mod artikel 12(1) i forordning 883/2004, som muliggør fortsat betaling af sociale sikringsbidrag i hjemlandet under udstationering til en anden medlemsstat.

For det første konkluderes, at betydelige forskelle mellem medlemsstaternes nationale sociale sikringsordninger skaber incitamenter for virksomheders strategiske udnyttelse, samt tilskynder til lovgivningsmæssig konkurrence mellem medlemsstaterne.

For det andet konkluderes at udformningen af koordineringsforordningerne rummer svagheder, som muliggør misbrug af systemet. Kriterierne for at påberåbe sig den fordelagtige regel i Artikel 12(1) er vage, hvorfor der er plads til fortolkning og dermed fortielse og fordrejning af fakta om udstationeringens reelle karakter. Samtidig bidrager A1-formularens bindende virkning kombineret med manglende incitament og muligheder for effektiv kontrol og håndhævelse, til, at misbrug kan fortsætte, selv ved tydeligt konstruerede udstationeringer.

For det tredje konkluderes, at EU-Domstolen har søgt at imødegå disse udfordringer gennem anvendelsen af det generelle EU-retslige misbrugsprincip på området for social sikring. Det følger heraf, at værtsmedlemsstatens myndigheder i tilfælde af misbrug kan se bort fra A1-formularens bindende karakter. Den præcise tærskel for, hvornår der er tale om misbrug, er dog fortsat uklar.

Slutteligt konkluderer specialet, at en revision af koordineringsforordningerne vil være hensigtsmæssig for at imødegå misbrug. Det vil være ønskeligt at styrke værtslandets håndhævelseskompetencer, da den nuværende ramme for håndtering af misbrug er en langsom og besværlig proces. Hvordan en sådan regulering konkret bør udformes, kan dog ikke fastlægges endeligt.

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1. Introduction

Freedom of movement lies at the heart of the European Union and is intended to break down boundaries affecting the movement of goods, services, capital and people within the nations of the EU.[1] These freedoms, together with fundamental principles such as equality and sincere cooperation, define the EU's core values and rely heavily on mutual trust between Member States to operate effectively.

Freedom of movement allows EU citizens to seek employment in any of the 27 Member States, enhancing economic growth and flexibility within the single market. One crucial area where freedom of movement depends on effective regulation is the coordination of social security systems. EU legislators have created a complex framework to coordinate national social security systems, which is designed to remove administrative burdens for employers and ensures that workers can move freely and still be covered by the social security system of the Member State they choose to work in. The coordination framework is designed to strike a balance between supporting the economic integration of the internal market whilst securing the fundamental rights of individual workers.

The Coordination Regulations set out provisions to determine which Member State's social security legislation applies. The posting rule in Art. 12(1) of Regulation 883/2004 allows genuine posting entities to continue to pay social security contributions in the home Member State, rather than subjecting posted workers to the social security system of the host Member State.

[1] TFEU Art. 26; European Council. EU single market.

The Coordination Regulations are not free from shortcomings and have been proven vulnerable to abuse. A significant concern arises from instances where companies exploit the posting rule by engaging in fraudulent posting practices. This typically involves the creation of a letterbox company in a Member State with low social security contributions where employees are formally registered. These employees perform no substantial activity in the Member State of registration but are instead posted to work in another Member State, generally one with higher social security contribution levels, allowing companies to gain a competitive advantage by avoiding high social security costs in the host Member State.

The challenge presents a dual issue - companies can exploit EU law to engage in fraudulent practices, while at the same time undermine workers' rights to social protection and equal treatment. Such abuse raises questions about the suitability and effectiveness of the current regulatory framework in upholding freedom of movement, whilst safeguarding workers' rights to equal treatment.

1.1. Problem statement

This master's thesis aims to analyse the coordination of social security systems within the European Union. The focus will be on abuse of the system by companies engaging in fictitious posting of workers to other Member States, in order to benefit from more favourable social security legislation. The thesis will examine the current regulatory framework designed to prevent such abuse, while also exploring potential avenues for future regulation.

1.2. Structure

To answer the problem statement, this thesis explores the structure of EU social security regulations and their potential for abuse. The paper focuses on the A1 form, clarifying its purpose, legal significance, and its key role in the coordination of social security systems across the EU. Furthermore, the thesis provides an analysis of the relevant procedural rules, outlining the obligations of Member States to cooperate. A critical analysis of important case law from the Court of Justice of the European Union (CJEU) follows, with particular attention to the circumstances under which host Member State courts may disregard A1 forms in cases of abuse. Finally, the thesis assesses the current legal framework and explores possible reforms to prevent abuse.

This thesis aims to strike a balance between simplification of a complex regulatory framework and providing a thorough analysis of technical legal issues.

1.3. Demarcation

This thesis focuses on the abuse of social security systems, specifically in relation to posted workers. To stay within the scope of the problem statement, a number of themes will be omitted. Discussions relating to posted self-employed workers and posted third country nationals will not be included. As the thesis focuses on corporate abuse of the social security system it will not address issues related to individuals exploiting social security coordination—commonly referred to as welfare tourism.[2]

The cumulative conditions required to invoke the posting rule in Article 12(1) Basic Regulation will be briefly reviewed, but due to the limited scope of the thesis, a more detailed analysis will be omitted.

While the Posted Workers Directive and its Enforcement Directive will be referenced, this thesis will not undertake a detailed analysis of their scope, underlying themes, or legal definitions.

[2] Nielsen 2024, p. 194.

1.4. Theoretical approach and methodology

1.4.1. Sources

Throughout the thesis, a range of primary and secondary sources will be used to support the analysis.

Treaties, the Charter of Fundamental rights and general EU principles form the primary sources of EU-law.[3] These are referenced throughout the thesis as independent legal sources and as a legal basis for the secondary sources, such as Regulations and Directives.

Binding secondary sources include EU Regulations, Directives and case law from the CJEU.[4] In addition to these non-binding sources, statements from the Advocate General, working documents, decisions from the Administrative Commission and practical guides issued by the European Union will be referenced. While these sources are not legally binding, they can offer interpretative guidance and shed light on the political context influencing the development of EU law.

Case law relating to the earlier versions of the social security regulations will be referenced, as the rules have largely remained the same, the judgements therefore still set a legal precedent.[5] Furthermore, a limited number of cases concerning self-employed posted workers will be referenced, given the significant similarities in the applicable posting rules and the overlap in relevant conditions.[6]

Complementing the sources mentioned above, materials including academic articles, books, relevant studies and web pages will be used to offer critical insights and theoretical perspectives on the issues discussed.

1.4.2. Methodology

The purpose of this thesis is to examine the existing regulatory framework, while also considering prospective developments within EU regulation. To determine the current state of the law, a *de lege lata* approach will be applied to analyse, systematise, describe, and interpret relevant legal sources.[7] To understand the current state of the law, it is also important to examine both the regulatory framework and case law through a historical lens. A *de lege ferenda* perspective will be employed to critically examine the current state of the law and explore potential avenues for future legal development.

As this thesis centres on EU law, interpretive methods specific to the EU legal system will be applied. The CJEU has developed a principle of interpretation where the starting point is the wording of the provisions, which must be interpreted in light of the purpose and context of the provisions, and the effectiveness of EU-law as a whole.[8]

Furthermore, a comparative method will be applied, where both case-law and EU legislation will be compared.

2. Social security

As this thesis examines the abuse of social security systems it is essential to first understand what social security means within the context of the EU and why its coordination across Member States is necessary, but also vulnerable to exploitation.

[3] Tvarno & Nielsen 2021, p. 139.
[4] TFEU Article 288.
[5] *Commission v. Belgium,* para 84.
[6] Pennings 2015, p. 119.
[7] Tvarno & Nielsen 2021, p. 34.
[8] C-283/81, *CILFIT*, para 18, 19 and 20; Sorensen & Danielsen 2025 p. 125.

This section outlines the origins and development of EU involvement in social security systems and defines the scope and core principles of social security. Furthermore, the section defines the concept of posted workers and explains how the abundance of social security systems can be exploited and undermine worker protections.

2.1. Origins and development

The European Union was originally established as an economic partnership, aimed at creating an unhindered internal market. While the economic aspects of the EU were extensive, the social dimension was more limited. Over the past 30 years, the EU has gradually expanded its focus to address objectives of a more social nature, shifting from a purely economic agenda to one that encompasses social considerations.[9] These considerations include a commitment to protect workers' rights enshrined in Art. 151 TFEU.[10] However, the EU does not aim to intervene in the autonomy of the individual Member States to control their internal welfare systems.[11] Therefore, a European welfare state does not exist.[12] Instead, welfare systems - such as healthcare, pensions, and unemployment benefits - remain highly diverse across the Union. However, it is recognised that the need for a certain level of regulation of welfare within the internal market is crucial to uphold the fundamental principles of free movement[13] and equal treatment[14]. It is essential to ensure that workers can move freely within the EU, with the confidence that they are socially insured in all Member States on a non-discriminatory basis. If there were no guarantee that workers would be insured in another Member State than their own, workers would be less willing to move within the EU to work.[15]

The first social security regulation within the European Union was adopted in 1958.[16] Over 65 years later, the EU still plays a central role in coordinating social security systems across its Member States. In 1958, only the six founding Member States of the European Union were involved in establishing the coordination rules. Today, the EU has expanded to include 27 Member States, with the most recent additions joining in 2013.[17] The expansion of the EU, specifically with the addition of lower- wage countries, and debates around social dumping and letterbox companies, raise questions as to whether the current Regulations are still fit for purpose in their current form.[18] This, however, is a controversial debate as Member States are hesitant to further harmonise their social security systems.[19]

2.2. Definition and scope within the European Union

Social security benefits are a core aspect of a well-functioning society, where the population is offered protection from economic hardship in the case of illness, unemployment or other cases of economic insecurity. Minimum rights to some form of social security coverage are rooted in the European Charter of Fundamental Rights, with Article 34(2) stating that everyone residing inside the European Union has a fundamental right to social security benefits. Social security benefits include an array of benefits, which include an array of support, such as coverage in case of accidents at work and occupational diseases, death grants, invalidity benefits, old-age and survivor's pensions, unemployment benefits,

[9] Neergaard and Nielsen, 2024, p. 186.
[10] Although the original Treaty of Rome included social provisions protecting workers' rights, the scope was limited compared to the current provisions; Jorens 2022, p. 6.
[11] Jorens 2022, p. 5.
[12] Ibid., p. 5.
[13] The fundamental protection of free movement is found in TFEU Art. 45-66.
[14] Acknowledged as a '*general unwritten principle of law*'; Tridimas 2006, p. 60.
[15] Paju 2017, p. 15.
[16] Regulation 3; Cornelissen 2009, p.9.
[17] European Commission, From 6 to 27 members.
[18] Jorens 2022, p. 375.
[19] Pennings 2015, p. 13.

family benefits etc.[20]

Whilst all Member States have some form of social security scheme, the individual States have adopted diverse approaches to organising their internal systems. The specific details of these systems fall outside the core focus of this thesis, but it is worth highlighting the two primary models to illustrate that Member States differ significantly in how they structure their social security systems.

The two primary models are the *Bismarck system* and the *Beveridge system*.[21] The Bismarck system is contributory and relies on employer contributions, while the Beveridge system is non-contributory and is funded through general taxation.[22] Aside from the structural differences of the social security systems, the level of protection offered to workers by the systems varies greatly.[23]

Article 48 of the Treaty on the Functioning of the European Union (TFEU) requires that measures coordinating social security systems within the EU must be adopted. While the structure of social security systems remains the responsibility of each individual Member State, EU legislators are required by the TFEU to play a coordinating role. A coordinating role differs from a harmonising role in that harmonisation requires changes to national legislation, where coordination allows national legislation to remain intact.[24] Two regulations which serve to coordinate social security systems within the EU have been adopted:

- Regulation (EC) No 883/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the coordination of social security systems (Hereinafter 'the Basic Regulation')
- REGULATION (EC) No 987/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (Hereinafter 'the Implementing Regulation')

These regulations (Hereinafter 'the Coordination Regulations') provide a framework for the coordination of social security systems, ensuring that individuals are covered by social security legislation whilst moving freely within the European Union.

The contents and implications of this coordination will be examined in greater detail in the following sections which will explore how the rules seek to balance freedom of movement with social rights of workers, whilst upholding the integrity of the social security systems of the individual Member States. As a foundation for this, issues relating to posted workers and the abundance of social security systems will be presented.

2.3. Social security in relation to the posting of workers

2.3.1. Posting of workers - a concept

The focus of this thesis is on the abuse of social security systems concerning posted workers. To understand how posting entities can exploit the EU's social security coordination, it's essential to first clarify the concept of posting.

According to the European Commission, a posted worker is defined as *"an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis, in the context of a*

[20] Basic Regulation Art. 36-69.
[21] Fuchs and Cornelissen 2015, p. 8.
[22] CESifo DICE Report 2008.
[23] Social Security Developments and Trends, p. 42.
[24] Pennings 2015, p. 7.

contract of services, an intra-group posting or a hiring out through a temporary agency."[25] In simpler terms, a posted worker is an employee working for an employer based in one Member State who is temporarily sent to perform work in another Member State. For example, a construction company based in Romania might send a number of skilled workers to work on a construction project based in Belgium. In contrast to a worker moving to another Member State and undertaking employment there, the posted worker continues to be tied to the home Member State, as the relocation to the host Member State is of temporary nature.[26]

These kinds of arrangements are a common practice across the EU. Data shows that in 2022 *"1.9 million posted workers and 4.7 million postings (...) were reported in the national prior declaration tools."*[27] This large number illustrates the practical importance of posting labour within the European Union.

The right for a service provider to post workers to another Member State is guaranteed by Article 56 TFEU, which protects freedom to provide services by prohibiting restrictions.[28] The CJEU has clarified that it constitutes unlawful discrimination if a service provider is not entitled to use its own employees in another Member State.[29] The access to post workers to another Member State ensures that companies can operate across borders without unjustified restrictions. The access to post workers abroad is not unrestricted, and the CJEU has underlined that the objective of combating social fraud and social dumping can justify a non-discriminatory restriction on freedom to provide services.[30]

2.3.2. The abundance of social security schemes within the EU-Member States and the incentive for abuse

When employers post workers to another Member State, they face the question of whether to pay social security contributions in the home Member State or the host Member State. In light of the principle of equal treatment, one would expect posted workers to be subject to the social security legislation of the host Member State and receive the same treatment as local workers. This is indeed the general rule, but an important exception exists.[31] As elaborated below, EU law allows posted workers to remain covered by the social security system of their home Member State. This means that employers can continue paying social security contributions in the Member State where the posting company is established. This mechanism has been put in place to facilitate freedom of movement by limiting administrative complications for the employer.[32] Whilst intending to facilitate freedom of movement, this also offers an incentive for employers to speculate in which Member State they would prefer to pay social security contributions to. This phenomenon is known as *forum shopping* - a situation in which employers can browse the social security regulations of different Member States and pick the one that is best suited to them, which is driven by economic interests.[33]

As mentioned above, the structures of social security systems between Member States within the EU are widespread. Along with this, the level of social security contributions to be paid by an employer vary greatly. For instance, the employer contribution rate in Belgium is 14% and in Sweden is 20.97% whereas it is a mere 2.25% in Romania.[34] According to numbers from 2019 *"on average, the nine Member States with the highest rate levy 23 percent of gross wages from employers; the nine Member*

[25] European Commission. Posted Workers.
[26] Birkmose et al. 2019, p. 343.
[27] Posting of workers data 2022, p. 10.
[28] Jaspers et.al 2024, p. 193.
[29] *Rush Portuguesa,* para 19.
[30] *Commission v Belgium* (2012), para 45.
[31] The main rule is found in Basic Regulation Art. 11(3) whilst the exception is found in Art. 12(1), which will be elaborated below.
[32] Decision No. A2, point 1.
[33] Jorens 2022, p. 306.
[34] ISSA Employee and employer contribution rates.

States with the lowest rate only 8 percent."[35]

Many companies seek economic advantage by using the coordination system to pay social security contributions in a Member State with significantly lower employer contribution rates than the one where their employees work. One notable example is the *Altun* ruling from 2018. The ruling involved a letterbox company formally registered in Bulgaria but operating solely in Belgium, allowing it to benefit from Bulgaria's lower social security contributions.[36]

The procedure works by establishing a letterbox company, that is essentially a shell, in a Member State with a low rate of employer social security contributions. The majority of the company's economic activities take place in another Member State, typically one with a higher level of employer social security contributions, with the sole purpose of exploiting the differing legislation between the two states to gain an economic advantage.[37]

Much negative can be said about the concept of letterbox-companies, but the CJEU has accepted that letterbox companies are not in themselves prohibited and has been relatively lenient towards the concept.[38] This reflects the desire to promote free movement. A central, and well-known, ruling in this area is the *Centros* ruling, where the CJEU explicitly stated that it is irrelevant whether a company establishes itself in a Member State with the sole purpose of carrying out activities in another Member State.[39] However, there has been an ongoing regulation within EU law aimed at combating letterbox companies in certain sectors, as the right to freedom of establishment must be balanced against other legitimate concerns.[40]

Whilst the intention of the Coordination Regulations has been to support freedom of movement, it has unintentionally created a loophole for fraudulent business practices, where companies can speculate in social security legislation.[41] This exploitation of the rules is problematic, particularly given the significant concerns about social dumping, which will be discussed in the next section.

2.3.3. Understanding the Issues of Social Dumping

Social dumping is a term often used, but not easily defined. As stated in a briefing by the European Parliament, *"Despite increasing usage of the expression 'social dumping', there is no clear, universally accepted definition of the term."*[42] The European Trade Union Institute has defined social dumping as *"the practice, undertaken by self-interested market participants, of undermining or evading existing social regulations with the aim of gaining a competitive advantage."*[43]

Social dumping is, in essence, a result of the free internal market, where both Member States and private parties can compete freely by lowering costs. The debate around social dumping arises from the tension between the EU's core principles of free movement, on the one side, and the commitment to protect workers' rights, on the other.[44]

Forum shopping between the abundance of social security systems across the EU can lead to social dumping and creates a situation where law becomes a product that can be traded on a market regulated

[35] Rennuy 2021, p. 14.
[36] See section 5.3.1 for an in-depth discussion.
[37] Kjeldgaard 2024, p. 23.
[38] Ibid., p.1 ff.
[39] *Centros*, para 17.
[40] Sorensen 2015, p. 25.
[41] Birkmose et al. 2019, p. 367.
[42] Understanding social dumping in the European Union, p. 2.
[43] Social dumping and the EU integration process, p. 4.
[44] Jacqueson 2009, p. 146.

by supply and demand. Employers or service providers are on the demand side of the market force, seeking to minimise costs by choosing social security systems with the most favourable legislation. National legislators are on the supply side and can compete by relaxing legislation to attract businesses. This is a concept known as *regulatory competition* - effectively turning law into a commodity.[45] Social security systems - which are put in place to protect workers - become a part of the cost of hiring employees, and thus something employers can speculate in to reduce labour costs. A company seeking to lower costs may choose to establish itself in a Member State with lower social security contributions, viewing these as an expense that can be reduced.

Although this setup allows for a competitive market, something that advocates of free market forces welcome, there are losers on the other side of the equation. The speculation inherently comes at the expense of the protection offered to workers and leads to social dumping.[46] The internal competition between Member States may lead Member States to weaken their social security systems to lower costs and remain competitive. This results in a *"race to the bottom"*[47], with Member States falling victim to the *"pressures of internal regulatory competition"*[48] to weaken social security protections in order to remain competitive. This undermines the goal of a social security system, which is to provide a safety net for workers - not to act as a tool to attract companies to establish themselves in a Member State through favourable regulation.

Though workers may seem free to choose employers offering the best benefits, including social security coverage, the reality is far more complex. In countries with a high unemployment rate in certain sectors, workers may be forced to accept contracts from employers aiming to exploit social security systems and offer posted labour at 'dumping' prices.[49] This high flow of incoming cheap labour also leads to displacement of the local workforce.[50]

Regulatory competition between social security systems results in negative consequences for both posted workers and local workers. However, the focus on maintaining an economically strong internal market often overshadows this human perspective.

Social dumping is in many ways a product of EU law. The internal market creates situations where social dumping can occur, as highlighted above, whilst EU law also contains mechanisms to mitigate it.[51] This duality highlights the tension between economic objectives and social protection. In the following section, the rules coordinating social security systems, aimed at balancing these opposing objectives, will be explored.

3. The rules coordinating social security systems

In 1957 EU legislators voted to adopt Article 48 TFEU (then Article 51 EEC), requiring the EU to adopt social security measures.[52] More elaborate social security legislation was adopted with regulations 3 and 4 in 1958, later replaced by Regulation 1408/71 in 1971 and Regulation 574/72 in 1972. Due to increased complexity caused by frequent amendments, these Regulations have since been replaced by the Basic Regulation in 2004 and Implementing Regulation in 2009.[53] Social security coordination within the EU has evolved in tandem with the changing nature of national welfare regulation.[54]

[45] Rennuy 2021, p. 18.
[46] Jorens 2022, p. 288-289.
[47] Rennuy 2021, p. 18.
[48] Scharpf 1997 quoted in Rennuy 2021, p. 18.
[49] Jorens 2022, p. 377.
[50] Pennings & Vonk 2023, p. 232.
[51] Jacqueson 2009, p. 138.
[52] Jaspers et.al 2024, p. 229.
[53] Pennings 2015, p.20.
[54] Basic Regulation, Recital 3.

3.1. Coordination rather than harmonisation

As mentioned above, EU legislators have established a system of coordination, rather than harmonisation, in accordance with Article 48 of the TFEU.[55] The coordination system determines which Member State's social security legislation is applicable but does not create a unified system of social security within the European Union. As stated in the preamble to the Basic Regulation *"It is necessary to respect the special characteristics of national social security legislation and to draw up only a system of coordination."*[56] According to Maximulian Fuchs, *"coordination aims simply at the "deterritorialisation" of national social security law, and not the harmonisation of its contents."*[57]

The following section outlines the scope of social security coordination, the interplay between the Basic and Implementing Regulations, and its key interpretive elements.

3.2. The Basic Regulation EC 883/2004 and The Implementing Regulation EC 987/2009

The rules coordinating social security systems within the EU are found in the Basic Regulation and the Implementing Regulation. EU Regulations are binding upon Member States directly, without implementation. Therefore, the rules do not differ between Member States.[58]

The scope of the Coordination Regulations will be briefly outlined below.

3.2.1. Personal Scope

The personal scope of the Basic Regulation is defined in Article 2, which has developed in step with the evolution of the Coordination Regulations. Originally the scope was limited to *"wage-earners and assimilated workers"*[59],whereas now there is no requirement of economic activity for a person to be covered by the personal scope of the current regulation.

It is a requirement that a person is a national of a Member State. However, stateless persons and refugees are also covered. Third country nationals are not covered by the scope of the regulation, despite several proposals to extend the scope to encompass them being issued by the European Commission.[60]

Furthermore, a person must have been subject to the *legislation* of at least one Member State. The term *legislation* is narrowly defined as *social security legislation* under Article 3 of the Basic Regulation.[61] As individual Member States retain autonomy over their social security systems the requirements for a person to be subject to the social security legislation will differ between Member States.

3.2.2. Material Scope

Article 3 of the Basic Regulation determines the material scope of the Coordination Regulation - i.e. which kinds of social security benefits within the systems of the individual Member States are coordinated at Union level.[62] The provision also includes an exhaustive list of benefits that are covered.[63] The Coordination Regulation encompasses the various social security systems of the Member States, and Article 3(2) states that it applies to *"general and special social security schemes, whether*

[55] Fuchs and Cornelissen 2015, p. 35.
[56] Basic Regulation, Recital 4.
[57] Fuchs and Cornelissen 2015, p. 11; Lakse 1993, p. 515.
[58] Pennings 2015, p.16.
[59] Ibid., p.36.
[60] Ibid., p.43.
[61] Basic Regulation, Art. 1(1); Pennings 2015, p.39.
[62] Fuchs and Cornelissen 2015, p. 12.
[63] Basic Regulation, Art. 3(1)(a) and (h).

contributory or non-contributory".

3.2.3. Interplay between the Basic regulation and the Implementing regulation

The Basic Regulation and the Implementing Regulation supplement each other to create a unified coordination system. The Basic Regulation lays down the general principles for coordinating social security systems, whilst the Implementing Regulation lays down important procedural and interpretive rules relevant for implementing the Basic Regulation correctly.[64] In other words, the implementing regulation fills out the gaps and prescribes, in a detailed manner, how the rules of the Basic Regulation should be implemented.

3.2.4. Interpretation of the rules

When reading and applying the Coordination Regulations, it is necessary to keep the teleological and dynamic interpretative method of the CJEU in mind. The CJEU does not only take the direct wording of provisions of EU legislation into consideration when applying it, but also considers the purpose, objectives and context of the rules.[65]

The rules coordinating social security systems have a dual purpose:

1. Ensuring freedom of movement of workers and services[66]
2. Guaranteeing social protection and equal treatment to workers[67]

The Coordination Regulations aim to ensure treaty-based freedoms, whilst also safeguarding fundamental EU principles. Fundamental EU principles are typically judicially developed, with many now enshrined in Treaties, and must always be applied when interpreting EU law.[68] These include the principle of equal treatment[69], the principle of sincere cooperation[70] and the principle of legal certainty[71]. In contrast, the fundamental treaty-based freedoms - such as the free movement of people, capital and services - are enshrined in EU treaties and form the backbone of the internal market.[72] The fundamental principles and treaty-based freedoms are closely interconnected, with the fundamental principles limiting the unrestricted application of treaty-based freedoms. Ultimately, EU law seeks to strike a balance between the protection of the fundamental principles of EU law, on the one hand, and the treaty-based freedom of movement on the other; the Coordination Regulations are no exception to this.

The coordination of social security systems aims to promote free movement, particularly of workers (Article 45 TFEU) and services (Article 56 TFEU). Its legal basis lies in Article 48 TFEU, which is situated among the provisions safeguarding free movement, which is why the Coordination Regulations should be interpreted in light of securing freedom of movement.[73] These provisions are frequently referenced when interpreting the Coordination Regulations.[74]

The coordination Regulations also aim to limit administrative complications, which supports the aim of ensuring free movement. By limiting the administrative burden related to social security

[64] Implementing Regulation, recital 1.
[65] Sorensen & Danielsen 2025, p. 125.
[66] Basic Regulation, recital 45.
[67] Ibid., recital 1 and 5.
[68] Tridimas 2006, p. 36.
[69] Ibid., p. 59 ff.
[70] TEU, Article 4(3).
[71] Tridimas 2006, p. 242 ff.
[72] Lennaerts et.al 202, p. 667.
[73] Pennings 2015, p. 15.
[74] Fuchs and Cornelissen 2015, p. 11.

contributions, service providers have a more unrestricted access to post workers to other Member States without having to engage with potentially complicated administrative processes of the social security system in another Member State.

Alongside the economic purpose of securing free movement, the Coordination Regulations have a social aspect; to ensure that workers are treated in a non-discriminatory manner and have social security coverage when moving within the European Union.[75] This is evident from the aim to ensure that workers do not fall between the gaps of social security systems, whilst only being covered by one social security system.[76]

The Coordination Regulations also aim to increase legal certainty and promote cooperation between Member States.[77]

The fact that the rules have multiple purposes and objectives can have the effect that interpretation of a provision, in light of the different objectives, can potentially lead to different outcomes. If interpretation of a rule in light of the free movement of services leads to one conclusion, but interpretation in light of the protection of workers leads to an opposing conclusion, which interpretation has precedence? How is an interpreter to decide which purpose is more worthy of acknowledgement? These opposing objectives will recur in the following sections.

4. The posting rule

4.1. Lex Loci Laboris

As stated previously, the overall principle of the coordination of social security systems is to ensure that a person is only covered by a single social security scheme. Article 11 of the Basic Regulation prevents overlapping benefits, and recital 14 of the preamble states that this is necessary to avoid complications from overlapping legislation. This purpose has also been confirmed by the CJEU on multiple occasions.[78] In the *Plum* ruling the CJEU stated that the regulation coordinating social security systems *"constitute a complete and uniform system of conflict rules the aim of which is to ensure that workers moving within the Community shall be subject to the social security scheme of only one Member State, in order to prevent the system of legislation of more than one Member State from being applicable and to avoid the complications which may result from that situation."*[79]

The main rule of *Lex Loci Laboris* for posted workers is derived from Article 11(3)(a) of the Basic Regulation. According to the provision, *"a person pursuing an activity as an employed or self- employed person in a Member State shall be subject to the legislation of that Member State"*. In other words, the main rule is that a worker shall be covered by the social security system of the Member State in which he or she is working. If this rule is applied to a posted worker, it means that the worker is subject to the social security scheme of the Member State in which the worker is posted.

The reasoning behind this main rule lies in one of the core principles of the European Union - The principle of equal treatment.[80] This principle is also reflected in Article 4 of the Basic Regulation, which ensures that persons covered by the regulation are entitled to the same social security benefits under the legislation of any Member State as that state's own nationals, and recital 5, stating that *"It is necessary, within the framework of such coordination, to guarantee within the Community equality of treatment under the different national legislation for the persons concerned."*. This is especially important for

[75] Basic Regulation, recital 1 and 5.
[76] *FTS*, para 49.
[77] Implementing Regulation, recital 5 and 6.
[78] *FTS*, para 49 and C-2/05, *Herbosch Kiere*, para 26.
[79] *Plum*, para 20.
[80] TFEU Art. 18 and Art. 45.

posted workers.[81] In light of this, the main rule of *lex loci laboris* is logical, as it ensures that workers from one Member State posted to another shall enjoy the same social security benefits as the nationals of the latter Member State, and thereby not be treated in a discriminatory manner.[82]

With *lex loci laboris* being the main rule, the Regulations set out an important derogation rule that makes the coordination of social security systems flexible in order to facilitate posting of workers, and thus freedom of movement.[83] The derogation rule makes it possible for a posted worker to remain subject to the social security legislation of the home Member State in certain situations. This is desirable for the employer, as the administrative burden of posting an employee to another Member State will be lower if the social security system that the employee is subject to remains the same. The employer will thus not have to familiarise with the social security system of another Member State, other than their own, which, due to the abundance of social security schemes, will ease the administrative burden significantly.[84] This facilitates an internal market where service providers can freely provide services in other Member States without being hindered by burdensome administrative processes. In the next section, the derogation rule will be expanded upon to illustrate how it may be subject to abuse.

4.2. The cumulative conditions necessary for derogation

The derogation rule to *lex loci laboris* is recognised as 'the posting rule', which is a term that will be used for the rule throughout this paper.[85] In order for a posted worker to be subject to the posting rule, a list of five cumulative conditions must be fulfilled. These conditions can be found in Article 12(1) Basic Regulation which states that:

> *"A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person."*

The conditions are supplemented by Article 14(1) and (2) Implementing Regulation, which provide interpretational guidance to Article 12(1) Basic Regulation.

The conditions define what constitutes a genuine posting situation (Hereinafter 'the posting conditions'). Along with the provisions in the Basic Regulation and Implementing Regulation, the CJEU has developed the content of the posting conditions through case law. As the provision is a derogation of the main rule, the CJEU has generally applied a strict interpretation method.[86] The Administrative Commissions decision number A2[87] and the Practical Guide on the applicable legislation[88] must also be mentioned as interpretive aids. The role of the Administrative Commission is laid down in Article 72 of the Basic Regulation. The task of the Administrative Commission is, *inter alia*, to deal with questions of interpretation of the Coordination Regulations and reconcile disputes rising between Member States regarding the Regulation, thereby ensuring correct and uniform application.[89]

It is necessary to outline the individual conditions briefly below in order to understand how the rules can be circumvented through constructed situations, where it superficially appears that all of the

[81] Basic Regulation, recital 8.
[82] This is also evident clearly stated in Basic Regulation, recital 17.
[83] Basic Regulation recital 1 and 45.
[84] Rennuy 2021, p. 17.
[85] Pennings 2015, p.112 and Jorens 2022, p. 286 ff.
[86] Jorens 2022, p. 292 and *Alpenrind*, para 95.
[87] Decision No A2.
[88] Practical guide.
[89] Basic Regulation, Art. 72(1) and (2).

conditions are fulfilled, but one or more of the conditions are, in fact, not satisfied.

4.2.1. The worker must carry out work on behalf of the employer

The first condition is: "*A person who pursues an activity as an employed person in a Member State on behalf of an employer"*[90]. This has been rephrased by the Administrative Commission as a "*direct relationship"* between the employer and worker it engages'[91]. This condition is dual in the sense that, to be considered a posted worker, the employee must:

1. Be a worker as defined by EU law
2. Carry out work on behalf of the posting employer

The term *worker* is a legal concept of EU law, which is defined in TFEU Article 45, and further developed by CJEU case law. Due to the limited scope of this thesis, the term will not be discussed further, and other sources should be referred to.[92]

To establish a direct link between the worker and the posting employer, the CJEU has stated that "*In order to establish the existence of such a direct link, it is necessary to deduce from all the circumstances of the worker's employment that he is under the authority of that undertaking"*[93]. The Administrative Commission has compiled a list of factors that can be used to assess whether a direct relationship exists. To mention a few examples, the list includes responsibility for recruitment, the power to terminate the contract, and the power to determine the nature of the work performed.[94] The condition seeks to prevent arrangements in which a letterbox company in Member State A formally employs workers who are *de facto* employed by an undertaking in Member State B. The goal of such a setup is to keep the workers subject to the more favourable social security system of Member State A, rather than subjecting them to the rules of Member State B, where they are actually working.

Despite the interpretative elements given by the Administrative Commission, the condition is still vague and leaves room for interpretation.

4.2.2. The employer must normally carry out their activities in the first Member State

The second condition is that the employer must "*normally carry out activities"* in the Member State where the workers are recruited.[95] Based on the example given above, the company established in Member State A must normally carry out activities in Member State A. Article 14(2) of the Implementing Regulation further elaborates on this condition, stating that the activity must be more than *"purely internal management activities"*[96]. This has been further clarified by the CJEU in the *TEAM POWER EUROPE* ruling from 2021, where the CJEU declared that "*That concept covers only activities of an exclusively managerial nature which are intended to ensure the effective internal functioning of the undertaking."*[97] In other words, the company must have some form of external activities in the Member State of establishment to be considered a genuine posting entity. It is not sufficient that the company solely posts workers abroad and only has internal managerial activities in the Member State of establishment.[98]

[90] Ibid., Art. 12(1).
[91] Decision No A2, Recital 3.
[92] Eg. Nielsen 2013, p. 242ff.
[93] *FTS*, para 24.
[94] Practical guide, p. 9.
[95] Basic Regulation Art. 12(1).
[96] Implementing Regulation Art. 14(2).
[97] *TEAM POWER EUROPE*, para 46.
[98] Ibid., para 50 and Plum, para 22.

4.2.3. The anticipated duration must not exceed 24 months

Article 12(1) of the Basic Regulation requires that the posting is of temporary nature and "*that the anticipated duration of such work does not exceed twenty-four months"*[99]. This condition is formulated vaguely, as the wording does not elaborate how *anticipated duration* is to be understood. It is not immediately clear whether the condition contains a subjective element, in which the employer's anticipated posting time is to be taken into consideration, or whether 24 months is to be understood as a hard ceiling that cannot be exceeded in any circumstances.

Article 16 of the Basic Regulation gives the authorities of the respective Member States access to derogate from the provision if an agreement is made.[100] Therefore, the provision must be understood as follows: the employer must not, from the beginning of the work, anticipate that it will last more than 24 months. If, however, the work at a later point draws out, there is a possibility for extension.[101]

The realistic anticipated duration of the work at the time of the posting is, therefore, the decisive factor.[102]

4.2.4. The worker is not sent to replace another worker

The fourth condition is that the posted worker must not be sent to replace another worker. A worker is considered to be sent to replace another worker even in the situation where the latter worker is sent by a different employer than the former worker.[103]

4.2.5. The worker was subject to the legislation of the home Member State immediately before the posting

The final condition that must be satisfied in order for a posted worker to be subject to the social security legislation of the home Member State is that the worker must have been subject to its legislation before the posting. Article 12(1) of the Basic Regulation states that the posted worker "*shall continue to be subject to the legislation of the first Member State*". This implies that the worker must have been subject to the first Member State's legislation prior to the posting in order to continue under it.

The condition does not elaborate on what the meaning of *legislation* is. This can be interpreted in two ways - either *legislation* is to be given a broad understanding, meaning that the condition is fulfilled as long as the worker has been subject to *any* legislation in the sending Member State (i.e. making residence the key factor); or, the condition can be given a more narrow meaning, limiting it to *social security* legislation. The latter interpretation would align with the definition in Article 1(l) of the Basic Regulation, which defines *legislation* as:*"(...)in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1)"*. The CJEU seems to disagree with this narrow interpretation and suggested in the *Walltopia* ruling that residence is sufficient to satisfy the condition, and that there is no requirement that the posted worker was an insured person under the legislation of the sending Member State before the posting.[104]

The condition is further elaborated in Article 14(1), which states that the posting rule "*shall include a person who is recruited with a view to being posted to another Member State, provided that, immediately before the start of his employment, the person concerned is already subject to the legislation of the Member State in which his employer is established.*" The posting rule is thus extended to apply to

[99] Basic Regulation Art. 12(1).
[100] Practical guide p. 16 and 17.
[101] Decision No A3, point 5.
[102] Pennings 2015, p. 117.
[103] *Alpenrind* para 100.
[104] *Walltopia*, para 51.

posted workers who are employed with the purpose of being posted to another Member State. However, it is not specified what the extent of the requirement *immediately before* is. The Administrative Commission has provided that a period of *"one month can be considered as meeting the requirement referred to by the words 'immediately before the start of his employment'. Shorter periods would require a case-by-case evaluation taking account of all the other factors involved."*[105] This, however, has not been confirmed in case law by the CJEU, but can be used as a guideline.

4.3. The ambiguity of the posting rule

The five cumulative conditions in the posting rule are formulated in a way that leaves them somewhat vague and open to interpretation. While CJEU case law has provided some clarification, ambiguities persist regarding the precise scope of the rules. Notably, the definition of a direct relationship between the employer and the posted worker, as well as the specific boundaries of purely internal management activities, and what constitutes being subject to the home Member State legislation *immediately before*, remain unclear. The lack of clarity in the rules creates room for interpretation, enabling manipulation, and increasing the risk of abuse, where facts may be concealed or distorted.

5. Abuse of social security coordination

Above, the material rules for invoking the posting rule have been reviewed. The following section turns to the procedural rules, with a particular focus on A1 forms, which play a central role in facilitating cooperation between Member States. These procedural rules, along with the ambiguity of the material rules, create conditions for abusive practices to occur and thrive.

5.1. A1 forms

5.1.1. An introduction to the A1 form

The A1 form plays a crucial role in the EU's coordination of social security systems. Its presence - or absence - has been at the heart of numerous cases before the CJEU. The A1 form, designed to promote coordination and mutual trust among Member States, often appears to be used as a tool for concealing fraudulent business practices. As stated by Yves Lorens *"there is probably no other certificate that is so notorious and that is so often associated to fraud as this A1 certificate."*[106] Before exploring how the A1 form can be misused for fraudulent ends, it is relevant to define what an A1 form is and the conditions for obtaining one.

The A1 form is a "*portable document certifying that a mobile worker in the European Union or EFTA countries and Switzerland is registered in the social security system of the country that issued it".*[107] Employers can obtain this document to show that a worker posted to another Member State is subject to the social security system of the home Member State.

According to Article 15(1) of the Implementing Regulation, *"where a person pursues his activity in a Member State other than the Member State competent under Title II of the basic Regulation, the employer (...) shall inform the competent institution of the Member State whose legislation is applicable thereof, whenever possible in advance."* If the employer intends to invoke the posting rule in Article 12(1) of the Basic Regulation, they must notify the competent institution in the home Member State. The formal requirement of this information is the A1 form.[108] It must also be noted that the words *wherever possible* indicate that prior notification is not an absolute requirement. This means that A1 forms

[105] Decision No A2, p. 2.
[106] Jorens 2022, p. 509.
[107] European Labour Authority. Glossary.
[108] Decision No 164.

can also be issued retroactively.[109]

5.1.2. The legal value of A1 forms

The A1 form is a document that provides clarity as to which Member State's social security legislation is applicable to a posted worker. Below, the legal significance of an A1 form, or lack thereof, will be defined.

The absence of A1 forms

A1 forms, as noted above, are a central element of the EU posting system. However, while the Implementing Regulation requires employers to notify the competent institution if they intend to invoke the posting rule, the CJEU has repeatedly confirmed that possessing an A1 form is not a prerequisite for invoking the posting rule. The ability to issue A1 forms retroactively demonstrates that their purpose is to confirm the applicable social security legislation, rather than to serve as a precondition for applying the posting rule.

In the recent *EX* ruling from January 2025, The CJEU further clarified the legal effects of A1 forms and emphasised that they are not a prerequisite for invoking the posting rule. The case concerned a Portuguese contractor that employed Portuguese workers and posted them to Belgium. In the case, the A1 forms being relied on by the contractor in order to invoke the posting rule were found to be false. This was first determined by the Belgian authorities and later confirmed by the Portuguese authorities, who stated that they had not issued A1 forms to the contractor.

The CJEU made it clear that even when it is uncontested that the A1 certificates are false, the posting rule can still apply, as the presence or absence of A1 certificates does not, in itself, create any rights. This aligns with the Court's statement in the recent *Zakład* ruling, in which the CJEU stated that *"Thus, (...) the A1 certificate is not a measure giving rise to rights but a declaratory act (...)."*[110]

In summary, an A1 form does not create any rights and is not a prerequisite for invoking the posting rule. The only requirements that must be met are the five posting conditions outlined above.[111]

Although the A1 form does not, in itself, create any rights and is not a prerequisite to invoke the posting rule, the A1 form is not without significance. The A1 forms is a formal, declaratory requirement that serves two purposes:

1. The A1 form serves as proof that the person concerned is insured in the home Member State[112]
2. The A1 form serves as proof that the posting conditions are fulfilled[113]

The presence of A1 forms

To invoke the posting rule, it is both necessary and adequate that all five cumulative conditions, as stated above, are fulfilled.[114] This means that in situations where an A1 form has not been issued, but all five conditions are fulfilled, an employer can invoke the posting rule in Article 12(1) of the Basic Regulation.

However, when A1 forms have been issued, they serve as binding proof that the posted worker is

[109] Pennings & Vonk 2023, p. 227 and *Banks and Others*, para 54 and *Alpenrind,* para 70.
[110] *Zakład*, para 48.
[111] See chapter 4.
[112] Decision No A1, point 1.
[113] Pennings & Vonk 2023, p. 227.
[114] See chapter 4.

insured in the home Member State and that the posting conditions are met. While A1 forms are a sufficient instrument for invoking the posting rule, they are not mandatory. This means that the competent authorities of the host Member State cannot simply disregard issued A1 forms, even if they suspect that the cumulative posting conditions have not been fulfilled. Article 5(1) of the Implementing Regulation clearly states that "*documents shall be accepted by the institutions of the other Member States for as long as they have not been withdrawn or declared to be invalid by the Member State in which they were issued."*

The CJEU has confirmed this principle on multiple occasions.

One early example is the *FTS* ruling from the year 2000, which is often referred to in later rulings as a precedent underlining that A1 forms are binding.[115] Although the ruling centres around the prior social security regulations No 1408/71 and No 574/72 and E101 forms (now replaced by A1 forms), it is still of importance, as the posting rules have remained very similar.[116] The ruling concerned an Irish company who posted workers to the Netherlands. The competent institution in the Netherlands raised doubts about the validity of the issued E101 forms, as the Dutch institution found that the conditions in the posting rule were not fulfilled. The CJEU stated that the E101 forms established a presumption that the posted workers are subject to the social security legislation of the home Member State,[117] and that "*a certificate is binding on the competent institution of the Member State to which those workers are posted."*[118]

The legal value of an A1 form is thus that it is binding on the competent institution in the host Member State, as long as it has not been withdrawn or declared invalid.[119]

The CJEU took the principle even further in the *A-Rosa Flussschiff* ruling, where it became apparent that A1 forms are legally binding even when it is clear that the cumulative conditions to invoke the posting rule are not fulfilled.

The ruling *A-Rosa Flussschiff* concerned a German company, who posted workers to work on vessels sailing exclusively in French waters.[120] The company also had a Swiss branch, which handled administrative tasks such as employment contracts.[121] The employer had obtained E101 certificates (A1 forms) for the posted workers, making them subject to Swiss social security legislation. The French social security authorities argued that the employer was bound to pay social security contributions in France for the posted workers. The key question before the CJEU was whether the French social security authorities were bound by the E101 certificates, even when it appeared that the employees activities clearly did not fulfil the conditions necessary to invoke the posting rule.[122] The CJEU stated, that even in such a situation, *"... as long as an E 101 certificate is not withdrawn or declared invalid, the competent institution of the Member State in which an employee actually works must take account of the fact that that person is already subject to the social security legislation of the Member State in which the undertaking employing him is established, and that institution cannot therefore subject the worker in question to its own social security system."*[123] The CJEU continued by stating that *"The foregoing conclusion is in no way altered by the fact that the workers concerned clearly do not fall within the scope of Article 14 of that regulation."*[124]

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[115] E.g. *Commission v Belgium*, para 56 and *Herbosch Kiere*, para 23.
[116] Commission v. Belgium, para 84.
[117] *FTS*, para 53.
[118] Ibid., para 53.
[119] Ibid., para 55; See also eg. *Herbosch Kiere*, para 33, *Banks and Others*, para 42 and *DRV Intertrans*, para 44.
[120] *A-Rosa Flussschiff*, para 22.
[121] Ibid., para 23.
[122] Ibid., para 34 and 52.
[123] *A-Rosa Flussschiff*, para 43.
[124] Ibid., para 52; Article 14 Regulation 1408/71 corresponds to Article 12 of the current Basic

The court considered the clear lack of compliance with the conditions for invoking the posting rule to be insignificant. This ruling made it unmistakably clear that, when there is an A1 form, the institutions of the host Member State must respect it, regardless of whether it is apparent that the conditions are not fulfilled.

Overview of the legal value of the A1 form

The legal value of A1 forms is clear:

1. A1 forms are not a prerequisite in order to invoke the posting rule,
2. A1 forms must be accepted by the institutions of other Member States, as long as they have not been withdrawn or declared invalid.

The legally binding nature of A1 forms, as affirmed by CJEU case law, strengthens the principle of legal certainty, as highlighted in the preamble to the Implementing Regulation.[125] This ensures that employers and workers can rely on the legal effects of an issued A1 form. This also ensures stability and consistency in the application of the EU's social security coordination rules - thus promoting freedom of movement.[126]

This section has determined that A1 forms must be respected in all circumstances, even when it is clear that the posting conditions are not met. However, this unconditional conclusion is questionable, as the five posting conditions exist for a reason — to ensure that postings are genuine and to prevent misuse of the rules. Fortunately, this nuance has been highlighted in several more recent CJEU rulings, which have developed a principle of abuse concerning social security coordination. The development of the principle of abuse is closely connected to the procedural rules laid down in the social security regulations. Therefore, these rules will be discussed in the following section.

5.2. The procedural rules

5.2.1 The principle of sincere cooperation

Since the posting of workers involves two or more Member States, it is reasonable to expect that these States must cooperate and ensure that postings proceed without complications. Cooperation between Member States is an essential component of the coordination of social security regulations, as the rules rely on mutual respect for the social security legislation of each Member State, the documents issued by competent institutions, and the assessments made by those institutions when issuing such documents.

Article 76 of the Basic Regulation makes it apparent that the institutions of Member States must communicate with each other to ensure the correct application of the Regulation. This codifies the general EU principle of sincere cooperation, outlined in Article 4(3) TEU, which stipulates that the Union and Member States must respect and support each other in fulfilling the tasks set out in the Treaties.[127]

5.2.2 The dialogue procedure

To facilitate the principle of sincere cooperation, the Implementing Regulation includes several important procedural rules aimed at fostering cooperation between Member States. These are found in Articles 5(1)-(4).

Regulation.
[125] Implementing Regulation, Recital 6.
[126] *Altun,* para 35.
[127] Recommendation No A1, p. 1.

The Administrative Commission has provided interpretive guidance to the dialogue procedure in its Decision No A1. However, it must be remembered that this decision is for guidance only and is not legally binding.[128]

Article 5(1) of the Implementing Regulation requires that documents must be accepted by institutions of a Member State as long as they have not been "*withdrawn or declared invalid"*. The document referred to in the provision is the A1 form.[129] The binding nature of the A1 form has been outlined above.[130]

Article 5(2)-(3) stipulates a dialogue procedure that must be followed where there are doubts concerning the validity of A1 forms. Specifically, Article 5(2) requires the host Member State's institution to request clarification from the issuing institution in the home Member State and, if necessary, to ask for the withdrawal of the documents if their validity is questioned. In contrast, Article 5(3) obliges the issuing institution to respond to the host Member State's request and to conduct an investigation to verify the information upon which the documents were issued.[131]

Article 5(4) dictates what actions must be taken by the Member States if no agreement is reached regarding the documents in question. According to the provision, the question must be brought before The Administrative Commission no earlier than one month after the institution of the host Member State sent its request to the issuing institution.

It is important to note that the decision of the Administrative Commission is not binding, and the Commission only plays a mediating role.[132] If the Administrative Commission fails to reconcile, infringement proceedings after TFEU Article 259 can be initiated.[133] However, this has never occurred.[134]

Adherence to the dialogue procedure prohibits the institutions of Member States from acting unilaterally and prescribes a collaborative procedure.[135]

To illustrate the rules in a more tangible way, the dialogue procedure comes into play where an institution of a home Member State A has issued A1 forms to an employer posting workers in Member State B, providing that the employer continues to pay social security contributions in Member State A. However, Member State B questions the validity of these documents - e.g., claiming that one or more of the five conditions in the posting rule are not fulfilled. In such a situation, the institutions of Member State B must respect the issued A1 forms.[136] However, Member State B is not bound to respect the A1 forms without further scrutiny. Member State B can ask the issuing institution of Member State A to reconsider the grounds for issuing the A1 forms and, if relevant, withdraw them.[137] The issuing institution must respond to this request and reconsider the grounds.[138] If Member States A and B cannot agree on whether or not the A1 forms were issued incorrectly and should be withdrawn, they are required to refer the question to The Administrative Commission.[139]

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[128] *Commission v. Belgium,* para 110.
[129] Birkmose et al. 2019, p. 355.
[130] See section 5.1.
[131] The Administrative Commission has defined a time limit of 3 months, with the possibility to extend to 6 months in its Decision No. A1 point 9 and 11. However this is not a legally binding timeframe.
[132] Jorens 2022, p. 515.
[133] The Administrative Commission has laid down a time frame of six months for reconciliation in Decision No A1 point 18.
[134] Jorens 2022, p. 514.
[135] Ibid., p. 439.
[136] Implementing Regulation, Art. 5(1).
[137] Basic Regulation, Art. 5(2).
[138] Ibid., Art. 5(3).
[139] Ibid., Art. 5(4).

The principle of sincere cooperation and the dialogue procedure aim to ensure that A1 forms are issued on a genuine basis, and thus only to genuine postings. The dialogue procedure gives the host Member State an opportunity to notify the issuing institution if there are doubts as to whether the posting conditions are genuinely fulfilled. This collaboration ensures that Member States can hold each other accountable to ensure that A1 forms are not issued without proper assessment.

5.2.3 The extent of cooperation

From recent case law, it has become apparent that the dialogue procedure is only relevant if there is a dispute between the institutions. In the *Zakład* ruling from November 2023, the Polish institution that issued an A1 form unilaterally withdrew the document after concluding that the underlying conditions had not been met.[140]

In the ruling, the CJEU concluded that the dialogue procedure does not need to be followed in situations where there i) is no dispute and ii) the issuing institution wishes to withdraw the issued documents.[141] This conclusion is in line with the opinion of the General Advocate, where "*(...) the EU legislature did not intend that dialogue and conciliation procedure to have a broad scope, but reserved it for specific needs of sincere cooperation."*[142] However, in line with the principle of sincere cooperation, the CJEU obligates the issuing institution to inform the host Member State of the withdrawal.[143]

The ruling clarified that the issuing institution can withdraw A1 forms unilaterally if it has determined that the posting conditions are not fulfilled. However, along with this access granted to the issuing institution, the CJEU also made it clear that the issuing institution has a duty. Not only does the issuing institution have an obligation to ensure that the posting conditions are fulfilled when issuing the A1 certificate, but that obligation goes beyond the moment the certificate is issued and extends to the period throughout the posting.[144]

5.2.4 Limitations of the dialogue procedure

The principle of sincere cooperation and its accompanying dialogue procedure ensure that "*closer and more effective cooperation between competent authorities and institutions is a key factor in taking action to combat fraud and error."*[145] However, it is apparent that the dialogue procedure is not without its faults and cannot be viewed as an impenetrable shield stopping all attempts at exploitation of the posting rule.

The dialogue procedure can be a lengthy process, involving time consuming steps potentially requiring a back-and-forth exchange between the institutions of Member States and, eventually, involving the Administrative Commission. This process could take months or even years to resolve, during which, posted workers may continue to work under conditions that violate the host Member State's standards for social security coverage all while awaiting the outcome. The lack of power for the host Member State to temporarily suspend or disregard A1 forms means that fraudulent social security practices can continue during the process.

Additionally, as the Administrative Commission's decisions are not binding which further worsens the

[140] It must be noted that the case revolved around Article 13(2) Basic Regulation, which regards selfemployed persons working in more than one Member State but can nevertheless be used to illuminate the scope of the dialogue procedure, as the dialogue procedure applies the entire application of the Basic Regulation.
[141] *Zakład*, para 38.
[142] *Zakład* GA opinion Para 36.
[143] *Zakład*, para 55.
[144] Melin & Parthenopoulos 2024, pp. 66-67.
[145] Decision No H5, point 4.

issue.[146] The host Member State has no enforceable mechanism available to hinder the exploitation of its social security legislation - and by extension, posted workers - until a final resolution is reached. The fact that the procedure is based solely on collaboration and mutual trust between Member States means that the procedure can become ineffective if there is a lack of willingness to collaborate.

This raises an important question: How can the system prevent such exploitation when sincere cooperation fails? Addressing this challenge requires a closer look at CJEU case law, which has developed a principle of abuse to combat such practices.

5.3. Development of the principle of abuse

5.3.1. The *Altun* ruling

Less than a year after the CJEUs *A Rosa Flussschiff* ruling, which allowed employers to rely on an A1 form even when the posting conditions are not fulfilled, the CJEU underlined that an undertaking cannot benefit from the posting rule in cases of fraud with the landmark *Altun* ruling.

The general EU principle of abuse was not unheard of prior to the *Altun* ruling. In the *Halifax* ruling from 2006, the CJEU made a general consideration stating that EU-law cannot be relied on for fraudulent ends.[147] However, with the *Altun* ruling, it became apparent that this general principle of abuse is applicable in cases of social security fraud.

Background and case facts

In the *Altun* ruling, the Belgian authorities conducted an investigation into the employment of a Belgian company, Asba.[148] The investigation revealed that the company did not employ any Belgian staff but subcontracted all of its work to a Bulgarian company that posted its workers to Belgium.
After further investigations, the Belgian authorities concluded that the Bulgarian undertakings had no significant activities in Bulgaria, i.e. the Bulgarian company was a letterbox company with the sole purpose of posting workers to Belgium.[149]

In November 2012, the Belgian authorities requested the Bulgarian authorities to review the A1 forms that had been issued for the posted workers. This request was in line with what is required from the dialogue procedure in Article 5(2) of the Implementing Regulation. After a reminder from Belgium, the Bulgarian authorities responded in April 2013, asserting that the posting conditions were met at the time of issuance.[150] However, they failed to consider the Belgian authorities' findings, leading Belgium to initiate legal proceedings against the Bulgarian company.

By judgement of September 2015, the Belgian court found that - despite all steps in the dialogue procedure not being fully exhausted - the Belgian authorities could disregard the A1 forms, as they had been obtained fraudulently.[151] To ensure correct interpretation, the following preliminary question was then brought before the CJEU:

"Can an E 101 certificate issued under Article 11(1) of Regulation [No 574/72], as applicable before its repeal by Article 96(1) of Regulation [No 987/2009], be annulled or disregarded by a court other

[146] This was made clear by the CJEU in the *Alpenrind* ruling, where the CJEU stated that A1 forms are binding even in situations where the Administrative Commission has determined that the A1 forms are incorrectly issued and should be withdrawn; *Alpenrind*, para 64.
[147] *Halifax and Others*, para 68.
[148] *Altun*, para 17 and 18.
[149] Ibid., para 19.
[150] Ibid., para 21.
[151] Ibid., para 25.

than that of the sending Member State if the facts which are submitted for assessment by it support the conclusion that the certificate was fraudulently obtained or relied on?"[152]

The CJEU's findings

The CJEU first outlined the material requirements for invoking the posting rule and emphasized that the principle of sincere cooperation obligates issuing institutions to properly assess the facts before issuing A1 forms.[153] The CJEU then proceeded to underline that A1 forms are binding and that the authorities of the host Member State must respect them.[154] The Court clarified that A1 forms are binding even if there is a manifest error of assessment of the conditions, or that it is clear that the conditions to invoke the posting rule are not met.[155] These statements are not a new development, as the CJEU had addressed this in an array of earlier cases.[156]

However, this case is significant, as the CJEU refined the general EU principle of abuse, in which individuals cannot rely on EU law for fraudulent means.[157] According to the CJEU, fraud is present if an *objective* and *subjective* factor is fulfilled.[158] The objective factor requires that the conditions for obtaining an A1 form - and thus relying on the posting rule - are not met.[159] The subjective factor, on the other hand, is tied to the intentions of the party obtaining the A1 form. It must be clear that the party intended to conceal or misrepresent facts to obtain an advantage.[160] In other words, the employer must have actively distorted or concealed facts to make it seem like the conditions for invoking the posting rule were fulfilled, in order to benefit from favourable legislation.

The CJEU also stated that the issuing institution must comply with the dialogue procedure and review the facts in light of the concerns presented by the host Member State. This must be carried out *"within a reasonable period of time"*[161]. If this does not happen, the court of the host Member State can disregard A1 forms.

Further, the CJEU underlined that it is a requirement that the accused parties in the proceedings are given the opportunity to rebut the evidence against them.[162]

In essence, the CJEU created a new legal route marking three conditions that must be present, for the national court of the host Member State to disregard issued A1 forms in cases of abuse:

1. The A1 forms have been obtained fraudulently, with both the objective and subjective aspect being met.
2. The dialogue procedure has been initiated, and the issuing institution has not carried out a review of the A1 forms within a reasonable period of time.
3. The persons who are alleged are given the opportunity to rebut the evidence.

The *Altun* ruling's impact and lingering uncertainties

The *Altun* ruling created a new opening, in which the courts of a host Member State can disregard A1 forms in cases of fraud and subject a posted worker to that Member State's social security legislation. With the decision, the CJEU concretised the general EU principle of abuse in the context of social

[152] Ibid., para 27.
[153] Ibid., para 31-38.
[154] Ibid., para 39.
[155] Ibid., para 46.
[156] See above section 5.1.
[157] *Altun*, para 49.
[158] Ibid., para 50.
[159] Ibid., para 51.
[160] Ibid., para 52 and 53.
[161] Ibid., para 54 and 55.
[162] Ibid., para 56.

security fraud.

Although the CJEU outlined three clear requirements, the ruling left several unanswered questions, such as:

- What amount of evidence is sufficient to establish fraud under the objective and subjective criteria?
- What constitutes *a reasonable amount of time* given to the issuing institution to conduct the review of the A1 forms?
- Does the power to disregard A1 forms extend beyond courts to administrative authorities in the host Member State?

5.4. Development after the *Altun* ruling

Following the *Altun* ruling, the CJEU has provided answers to some of the questions that remained unresolved and solidified the legal position established in the *Altun* ruling. Two notable cases will be discussed below.

5.4.1. The Commission v. Belgium ruling

Only a few months after the *Altun* ruling, the CJEU delivered another landmark judgment on social security coordination in *Commission v. Belgium*.[163] This ruling further clarified the limits of a host Member State's authority to unilaterally disregard A1 certificates. The case concerned Belgian legislation that allowed Belgian authorities to disregard A1 forms immediately in an attempt to combat fraudulent postings.[164]

In the ruling, The Commission challenged Belgium's national legislation, arguing that it violated the mandatory dialogue procedure established under EU social security coordination regulations.[165]

The contested Belgian legislation allowed authorities to unilaterally disregard A1 forms if they were obtained through an abuse of rights under the Coordination Regulations. Belgium invoked the general legal principle of abuse.[166] The Commission, on the other hand, argued that the Coordination Regulations already provided an effective and exhaustive solution for a cooperative procedure in situations where fraud or abuse is suspected.[167]

The CJEU confirmed that the general principle of abuse is applicable in cases of social security fraud but emphasised that the mandatory dialogue procedure set out in the Coordination Regulations must still be followed.[168]

As with the numerous previous rulings on A1 forms, the CJEU repeated the legal value of A1 forms, underlining that they are binding as long as they have not been withdrawn or declared invalid.[169] The CJEU stated that "*even in the case of a manifest error of assessment of the conditions governing the application of Regulation No 883/2004, and even if it were established that the conditions under which the workers concerned carry out their activities clearly do not fall within the material scope of the provision on the basis of which the A1 certificate was issued, the procedure to be followed in order to resolve any dispute between the institutions of the Member States concerned as regards the validity or*

[163] *Commission v Belgium*.
[164] Ibid., para 10.
[165] Ibid., para 16.
[166] Ibid., para 17.
[167] Ibid., para 52.
[168] Ibid., para 99 and 100.
[169] Ibid., para 85-88.

the accuracy of an A1 certificate must be complied with".[170] With this, the CJEU underlined the binding effect of A1 forms, even in situations where it is clear that the material conditions for imposing the posting rule are not fulfilled.

In cases where disagreements arise regarding the validity of A1 forms, the CJEU stressed the importance of adhering to the dialogue procedure.[171] The institutions of the host Member State must contact the A1 issuing institution and request a review of the underlying facts on which the form was issued. The CJEU underlined that it is a crucial element of the dialogue procedure that the issuing institution must carry out a *proper assessment* of the facts in question before making a decision.[172]

Referring to the *Altun* ruling, the CJEU upheld the legal position previously established, stating:

"If the latter institution fails to carry out such a review within a reasonable period of time, it must be possible for that evidence to be relied on in judicial proceedings, in order to satisfy the court of the Member State to which the workers have been posted that the certificates should be disregarded."[173]

However, the CJEU found that the national provisions of Belgian law were not in line with the conditions for disregarding A1 forms as developed in the *Altun* ruling.[174] The Court emphasised two main shortcomings:[175]

> First: The Belgian legislation did not require adherence to the obligatory dialogue and conciliation procedure in Article 5 Implementing regulation before allowing authorities to disregard A1 forms.
>
> Second: The Belgian legislation allowed A1 forms to be disregarded outside of judicial proceedings.

These flaws directly contradicted the *Altun* ruling, which established that, for the courts of the host Member State to disregard A1 forms, i) the dialogue procedure must be initiated, and ii) the issuing institution must have failed to review the A1 form within a reasonable time. The Belgian legislation permitting authorities to disregard A1 forms without reference to the dialogue procedure directly contradicted these requirements.

Additionally, the *Altun* ruling held that individuals who are alleged must be given the opportunity to rebut the evidence against them. Since Belgian legislation allowed authorities other than national courts to disregard A1 forms, it effectively denied the individuals concerned the legal protection provided by judicial proceedings - and, by extension, the opportunity to rebut the evidence, as required by the *Altun* ruling.

Thus, the CJEU concluded that Belgium's unilateral approach was incompatible with EU law, reinforcing the procedural safeguards established in *Altun*.

5.4.2. The *Alpenrind* ruling

The *Alpenrind* ruling, from 2018, concerned which social security legislation was applicable to workers posted to Austria under an agreement between the Austrian company Alpenrind and the Hungarian company Martimpex.[176] Martimpex posted workers from Hungary to Alpenrind in Austria to perform

[170] Ibid., para 93.
[171] Ibid., para 86.
[172] Ibid., para 89.
[173] Ibid., para 101.
[174] Ibid., para 104.
[175] Ibid., para 105.
[176] *Alpenrind*, para 2.

meat cutting and packing work.[177] The Hungarian authorities had issued A1 forms to the posted workers, stating that they were subject to Hungarian social security legislation.[178]

The Austrian authorities wished to disregard the A1 forms and make the posted workers subject to Austrian social security legislation. The question was brought before Austrian courts, who referred to the CJEU for a preliminary ruling. The referring court asked the CJEU whether A1 forms only were binding for the institutions of the host Member State, or whether they were also binding for the courts of the host Member State.[179] The court's question arose from Article 5(1) of the Implementing Regulation, which explicitly mentions that documents shall be accepted by "*institutions*" but does not mention "*courts*," thus leaving room for interpretation.[180]

The CJEU addressed the question by stating that Article 5(1) also states that A1 forms are binding unless they have been withdrawn or declared invalid by the issuing institution - thus drawing the conclusion that only the issuing institution can withdraw or declare A1 forms invalid.[181] The CJEU underlined that A1 forms are binding not only for institutions of the host Member State, but also the courts. However, the door is left open for courts to disregard A1 forms in cases of abuse, with the CJEU stating that:

"If it were to be accepted that, apart from cases of fraud or abuse of rights, the competent national institution could, by bringing proceedings before a court of the host Member State of the worker concerned to which that institution belongs, have an A1 certificate declared invalid, there would be a risk that the system based on sincere cooperation between the competent institutions of the Member States would be undermined."[182]

The CJEU confirmed this position even in situations where the Administrative Commission, following proper procedural steps, had determined that the A1 forms were incorrectly issued and should be withdrawn.[183] The circumstances in which A1 forms may be disregarded are therefore very limited.

With the *Alpenrind* ruling, the CJEU did not create a new legal position, but confirmed the legal position created in *Altun*. In the *Altun* ruling, the CJEU established a narrow exception to the binding nature of A1 forms by setting out the conditions under which national courts may disregard them in cases of abuse. This exception was further clarified in *Alpenrind*, where the Court emphasised that it applies strictly to situations of fraud or abuse of rights and reaffirmed that only national courts - not administrative authorities - have the authority to disregard A1 forms. The CJEU emphasised the limited scope of the exception by underlining the risk of undermining the system of sincere cooperation and mutual trust between Member States, if the access to disregard A1 forms were too broad.

5.4.3. Navigating the principle of abuse in light of the rulings

The *Altun* ruling was significant because it provided a legal basis for host Member States to disregard A1 forms in cases of fraud, thereby preventing abuse of the posting rule. As outlined above, the CJEU established three key conditions: i) the A1 certificates must have been obtained fraudulently, meaning both an objective and subjective element of fraud must be met; ii) the issuing Member State must have failed to conduct a proper review of the forms within a reasonable period after being presented with evidence of fraud; and iii) the alleged parties must be given an opportunity to challenge the evidence in judicial proceedings.

[177] Ibid., para 20 and 21.
[178] Ibid., para 23.
[179] Ibid., para 30.
[180] Ibid., para 37.
[181] Ibid., para 39.
[182] Ibid., para 46.
[183] Ibid., para 64.

The more recent rulings complement the precedence created by the *Altun* ruling. While the CJEU does not permit the A1 forms to be disregarded in the two rulings, it does not overturn the precedent set in *Altun* but clarifies and limits the circumstances under which Member States may unilaterally disregard A1 forms in cases of abuse. It is relevant to note that the CJEU has consistently reaffirmed the principles discussed above in a series of judgments issued after the *Alpenrind* and *Commission v Belgium* rulings.[184]

First, the CJEU has made it clear that, in order to disregard A1 forms due to fraudulent obtainment, the dialogue procedure laid out in the Implementing Regulation must be initiated and subsequently halted due to a lack of cooperation from the home Member State. Unfortunately, the CJEU did not specify the time frame available to the issuing Member State to cooperate, granting no further clarity on what *a reasonable amount of time* constitutes. The Administrative Commission has stated that the issuing institution must respond as soon as possible, but at least within 3 months.[185] Whilst this can be used as guidance, it must be remembered that decisions by the Administrative Commission are not binding.[186] It is worth noting that, in a 2020 ruling, the CJEU held that a period of two years does not constitute *a reasonable amount of time.*[187] Therefore it can be deduced that a reasonable amount of time is somewhere below the two-year mark, with the limit of 3 months as a possible reference point. In the same judgment, the Court also clarified that the authorities of the host Member State are required to initiate the dialogue procedure *promptly* when there is suspicion of fraud.[188] This adds an additional layer to the conditions that must be satisfied for the courts of the host Member State to disregard an A1 form.

Moreover, the CJEU restricts the authority to disregard A1 forms solely to the courts of a Member State, excluding other authorities from making such determinations in cases of fraud. While this was implied in the initial *Altun* ruling, the Court has now expressed it more explicitly, providing greater clarity. The *Alpenrind* ruling reinforced this principle by confirming that institutions and courts of the host Member State must respect A1 forms. However, courts may set them aside - but only in cases of fraud or abuse. The access for the courts of the host Member State to disregard A1 forms is narrow and limited to situations where both the objective and subjective elements of fraud are present. Courts of the host Member State remain bound by A1 forms in most circumstances - even where the substantive conditions for applying the posting rule are not satisfied. This may occur in situations where the objective indicators of fraud are present (i.e., the formal posting conditions are not met), but the subjective element - the intent to deceive or abuse the system - cannot be proven. This raises some concerns, as fraudulent postings may persist simply because the burden of proof for fraud is too high or difficult to establish. The CJEU has not established a clear guidance for proving abuse, leaving this assessment to the discretion of the Member States.

The recent rulings have reinforced that A1 forms remain binding unless withdrawn or declared invalid, ensuring that the principle of legal certainty is upheld, while still allowing for action against fraud under the conditions set out in *Altun*.

However, uncertainties remain. Hopefully, future CJEU rulings will provide greater clarity to the scope of the dialogue procedure and the threshold for proving abusive incentives, creating a more tangible approach to combating abuse in social security coordination.

[184] Given the scope of this thesis, the analysis has been mainly confined to the selected rulings. Worth mentioning are *Vueling Airlines,* para 77, *EX,* para 40, *Zakład*, para 35, *Inspecteur van de Belastingdienst,* para 45 and *DRV Intertrans,* para 65-66.
[185] Decision No A1, point 9.
[186] *Commission v Belgium,* para 110.
[187] *Vueling Airlines*, para 85.
[188] Ibid., para 86.

6. The future of EU social security coordination

6.1. Current approaches

Recent years have shown a growing concern for cases of abuse of the EU coordination rules on social security. This has been especially present with the adoption of 13 new Member States in the EU since 2004, which has brought new challenges and concerns regarding social dumping.[189] A number of proposed amendments to the social security regulations will be explored below.

6.1.1. The European Commission's proposal of December 2016

Although the Coordination Regulations have not been recently amended, the evolution of the European social security coordination is not completely at a standstill. In December 2016, the European Commission put forth a proposal to amend EU Regulations on social security coordination as part of the 2016 European Commission's labour mobility package.[190]

This proposal makes it clear that harmonising the specific features of Member States' individual social security systems is not the intention.[191] The aim is, *inter alia*, to: i) strengthen the administrative rules on information exchange and verification of social security status, and ii) to specify a uniform approach to the issuance, verification and withdrawal of the A1 form.[192] These two aspects of the proposal are particularly relevant in the context of fraud and the abuse of social security systems.

As of today, the proposal remains a work in progress, continually evolving due to ongoing challenges in reaching agreement and compromise. Below, a selection of relevant points of the 2016 proposal will be outlined, to investigate the potential of the proposed measures to address the continued abuse of social security systems.

Efforts to combat fraud through stronger definitions

Definition of a genuine posting

The Commission has proposed an amendment to Article 12 of the Basic Regulation to clarify that the term *posted worker* should be understood in accordance with the definition provided in the Posted Workers Directive. This amendment does not alter the scope of the provision, meaning the existing conditions for invoking the posting rule remain unchanged. However, it refines the concept of a *posted worker* as an autonomous term within EU law.

The definition of a *posted worker* in the Posted Workers Directive is somewhat vague, lacking specific and tangible criteria.[193] However, the concept of a *genuine posting* has been further elaborated in the Enforcement Directive. Article 4 of The Enforcement Directive provides clear and concrete circumstances to determine whether a posting is genuine, with the primary goal of combating fraud and abuse.[194]

By aligning the Basic Regulation's posting rule with the definition of a posted worker under both the Posted Workers Directive and its Enforcement Directive, the assessment of fraudulent practices becomes a more integral part of the posting rule itself. This change provides Member States' competent institutions with practical tools within the regulation to assess whether a posting is genuine - and,

[189] Pennings & Vonk 2023, p. 225.
[190] Proposal December 2016, p. 2.
[191] Ibid., p. 2.
[192] Ibid., p. 3.
[193] Posted Workers Directive, Art. 2(1).
[194] Enforcement Directive, Recital 5-7.

consequently, whether the posting rule applies.

In my opinion, this clarification might help to mitigate the ambiguity of the five posting conditions, as emphasised above in section 4.3, and assist the determination of whether the subjective element of abuse is present.

Definition of fraud

The Commission has proposed to implement a definition of *fraud* in Article 1(2) of the Implementing Regulation. This shows that combating fraud has been a central aspect of the proposed amendment. The proposed definition is:

> *"'fraud' means any intentional act or omission to act, in order to obtain or receive social security benefits or to avoid to pay social security contributions, contrary to the law of a Member State."*[195]

This definition aligns with the subjective element of the principle of abuse, as established in case law, and could offer greater clarity on when the principle of abuse may be invoked. However, it leaves considerable discretion to Member States, who must make a concrete assessment of every individual case. As a result, this somewhat vague definition provides limited guidance in determining whether the subjective element of abuse is present but codifies the desire to prevent fraudulent practices within the Regulation.

Refining the dialogue procedure

A clear time frame

The European Commission has proposed an amendment to Article 5 of the Implementing Regulation to enhance efficiency in reviewing the legality of issued A1 forms. This amendment introduces a 25-day time limit for the issuing institution to assess and, if necessary, withdraw a fraudulently obtained A1 document upon request from the host Member State. Furthermore, the issuing institution must provide all supporting evidence on which its decision is based to the requesting institution. In cases of *demonstrable urgency*, the time frame is reduced to just two working days.[196]

If adopted, this amendment would reduce uncertainty by establishing a more structured framework for the dialogue procedure. It also reflects the Commission's effort to define what constitutes *a reasonable amount of time,* providing much-needed clarification following the vague formulation of this requirement in the *Altun* ruling.

In my view, one of the main issues facing the current regulation is the effectiveness of the collaborative procedure. The procedure is lengthy and relies solely on the willingness of the institutions of Member States to collaborate. The amendment, whilst providing a clear time frame for cooperation, and in theory shortening the duration of the procedure, does not provide the institutions of the host Member State with any new response mechanisms to a breach of the time frame. The institutions of the host Member State are left with no other choice than to rely on judicial proceedings, as granted in case law from the CJEU. In my opinion, the proposed time frame of 25 days can only be effective in combating abuse if the institutions of the host Member State are granted tools, other than lengthy judicial proceedings, to deal with non-compliance from issuing institutions. Suggestions for possible tools which could be made available to the institutions of the host Member State will be discussed further in section 6.2.

Verification of A1 forms

In line with case law from the CJEU, as referenced in the sections above, the Commission has proposed to amend Article 19 Implementing Regulation to explicitly provide that the issuing institution has an

[195] Proposal December 2016, p. 34, point. 4.
[196] Ibid., p. 14, point. 7.

obligation to verify information provided by the applicant before issuing an A1 form.[197] In my view, this does not introduce a new framework but rather emphasises an implicit requirement that has always been inherent in the posting rule.

In line with case law from the CJEU, as referenced in the sections above, the Commission has proposed to amend Article 19 Implementing Regulation to explicitly provide that the issuing institution has an obligation to verify information provided by the applicant before issuing an A1 form.[198] In my view, this does not introduce a new framework but rather emphasises an implicit requirement that has always been inherent in the posting rule.

6.1.2. Advancing or stagnating? The Uncertain Future of the proposal

The proposal is still underway and is listed in the Commissions 2025 Work Programme as a "*pending proposal*".[199] The La Hulpe declaration of April 2024 on the future of the European Pillar of Social Rights identifies social security coordination as a focus point. However, it also stresses that "*to make social security coordination future-proof, more legal certainty, more transparency and more cooperation between Member States is needed.*"[200]

It may seem that the proposal has been at a standstill since 2016. As put by De Wispelaere and Vukorepa "*the failure to reach an agreement has led to an impasse.*"[201] However, there have been an array of negotiations and provisional agreements aiming to reach consensus among the Member States. These negotiations have included several additions intended to mitigate abuse and strengthen cooperation.

In December 2023, leading up to yet another trialogue procedure[202], the presidency suggested a number of compromises and new proposals to help pave the way to an agreement. The presidency noted that *"Compromises are necessary, and any possible agreement will undoubtedly include elements that might not reflect each and every request"*[203]

A more recent addition, as suggested in the Provisional Agreement of March 2019[204], introduces a mandatory prior notification of the applicable social security legislation in Article 15 of the Implementing Regulation, which currently only requires prior notification *wherever possible*.[205] In other words, the proposal makes the prior possession of an A1 form mandatory. Acknowledging the need to avoid creating a *cumbersome system* with great administrative burdens, the presidency suggested two general exemptions: i) for business trips and ii) activities with a duration of no more than three consecutive days within a period of 30 consecutive days.[206] The goal of the mandatory requirement for prior notification is part of the Parliament's broader aim *"to put in place stricter rules, specifically concerning posting situations, as well as to ensure a tight control over administrative cooperation."*[207]

[197] Ibid., p. 15, point. 13.
[198] Ibid., p. 15, point. 13.
[199] Annexes Commission work programme 2025, p. 17.
[200] La Hulpe Declaration, point 30.
[201] Pennings & Vonk 2023, p. 225.
[202] As noted by the presidency in document ST-16202-2023-INIT, 18 prior informal dialogue procedures regarding the proposal have already taken place.
[203] ST-16202-2023-INIT, page 3.
[204] 7698/19 ADD 1 REV 1, page 46.
[205] See section 5.1.1.
[206] ST-16202-2023-INIT, page 3.
[207] ST-6318-2019, page 3.

A mandatory requirement to inform the institution of the home Member State would make it easier to monitor postings and ensure that the posting rule is not exploited in situations where no A1 form is present.[208] However, despite the two exceptions for shorter business trips and postings, the requirement could be criticised, as it would increase the administrative burden on employers, thus posing a potential obstacle to freedom of movement. The Spanish Presidency attempted to mitigate this obstacle by including a possibility of post-notification in emergency situations, within three days of the start of the posting activity in another Member State.[209]

This amendment has not yet been processed, but it is not unlikely to anticipate that Member States will raise objections to the introduction of the further administrative requirements that the proposal entails.

The current Polish Presidency of the EU Council aims to make significant progress toward reaching a compromise.[210] The most recently published step in the process is a questionnaire sent to Member States, allowing them to express their positions on key issues and identify potential areas for agreement.[211]

6.1.3. A more digitalised system

In recent years, there has been an increasing focus on the digitalisation of information, with the field of social security coordination being no exception.[212] Digitalisation can help lessen administrative burdens, as paper-based systems are often slower and more inconvenient. In 2017, the European Commission launched the Electronic Exchange of Social Security Information system (EESSI).
According to the European Commission *"EESSI introduces safeguards to ensure that the data exchanged is correct and complete, helping institutions to combat fraud and error."*[213] In addition to this, the European Parliament has proposed the introduction of the so-called European Social Security Pass (ESSPASS), which is a mobile application where documents, such as A1 forms, can be accessed and checked in real time. In introducing the ESSPASS, the Parliament acknowledges the limitations and challenges related to the A1 procedure and emphasises that *"the ESSP initiative would provide real-time information on the social security coverage of mobile workers on the day of a labour inspection in the host Member State".*[214]

The digitalisation of A1 forms is a positive initiative, as the number of issued A1 forms will likely increase due to current discrepancies between the number of issued A1 forms and actual postings, in a concerted attempt to reduce the number of so-called *shadow-postings*.[215]

While digitalisation can be seen as a step in the right direction - streamlining processes and reducing administrative burdens - it cannot be seen as a solution to abusive practices. The problem is deeply rooted in the system and will be explored below.

[208] It must be recalled that the possession of an A1 form is not a prerequisite to invoke the posting rule.
[209] WK 583/2025 INIT, page 3.
[210] Ibid., page 1.
[211] Ibid.
[212] European Commission. Europe's Digital Decade: digital targets for 2030.
[213] European Commission. Electronic Exchange of Social Security Information.
[214] Introduction of a European Social Security pass for improving the digital enforcement of social security rights and fair mobility, page 9.
[215] Pennings & Vonk 2023, p. 228.

6.2. Assessment of the current approaches - further harmonisation or divergence

6.2.1. A1 forms - the red herring of social security fraud

Although current approaches, which place the issuance of A1 forms at the forefront, aim to combat fraud and system abuse, I will argue that this focus is a red herring, diverting EU legislators' attention from the root of the problem.[216] The purpose of the A1 form, as stated above, is to prove that i) the posting conditions are fulfilled, and ii) that the worker is insured in the home Member State.
However, as also outlined above, host Member States must respect A1 forms even if the posting conditions are not fulfilled, meaning that A1 forms sometimes merely serve as a proof that the worker is insured in the home Member State, rather than a proof that the posting conditions have been met. [217]While I acknowledge the issues associated with postings without A1 forms, I do not believe that the proposed mandatory notification system and digitalisation of A1 forms will effectively address the exploitation of posting rules. This is due to two interrelated factors: i) the lack of incentive for the home Member State to verify that the posting conditions are fulfilled, and ii) the lack of enforcement mechanisms granted to the host Member State to combat fraudulent postings. The interplay of these two factors creates a gap in the enforcement of the posting rules - or, as phrased by Nicolas Rennuy, *the enforcement deficit*.[218]

Lack of incentive for verification and enforcement

The responsibility for verifying and enforcing compliance with the posting rule lies with the home Member State. The home Member State receives applications for A1 forms, issues them, and is responsible for ongoing control with the basis of the issued A1 forms. This is problematic, as the home Member State has limited incentive - and sometimes insufficient access - to ensure that only genuine postings, which fulfil the posting conditions, benefit from the posting rule.

A study carried out by Eurofound in 2020 sent out a questionnaire to Member States on the extent to which they verify compliance with posting conditions. The study showed that only a few Member States actually asked for documentation to confirm that the posting conditions were met, and just two out of 13 Member States conducted random checks to verify the accuracy of the information provided.[219] This study indicates that Member States largely fail to fulfil their obligation to verify that the posting conditions are met.[220] While the Commission has proposed amending Article 19 Implementing Regulation to explicitly include this responsibility, it is questionable whether a mere change in wording will be sufficient to incentivise Member States to act. After all, infringement proceedings can be lengthy and complicated. I argue that more tangible verification mechanisms are needed - e.g. the introduction of clear and mandatory requirements to request documentation and check worksites.[221]

In some cases, a home Member State could lack the incentive to ensure that the posting conditions are fulfilled even before issuing A1 forms. One could cautiously argue that a home Member State may have an incentive to do the opposite. It may be more motivated to ensure that workers remain subject to its own social security system, guaranteeing a flow of social security contributions into its welfare system, rather than redirecting contributions to another Member State.[222] This aligns with the problem of regulatory competition between Member States, as discussed in section 2.3.3. From the perspective of the free market, it is understandable that Member States have an interest in retaining monetary contributions

[216] Pennings & Vonk 2023, p. 247.
[217] Pennings & Vonk 2023, p. 136.
[218] Rennuy 2022.
[219] Eurofound 2020, p. 17.
[220] Melin & Parthenopoulos 2024, pp. 66-67.
[221] Pennings 2015, p. 118.
[222] Rennuy 2022, p. 227.

for their own system rather than allowing them to be transferred abroad.

Even if the lack of verification is not driven by regulatory competition, the home Member State has little incentive to invest time and resources in the administrative process of verifying A1 forms. Moreover, even if the home Member State genuinely wishes to monitor a posting, doing so may prove difficult due to its lack of jurisdiction in the host Member State, due to the territorial nature of enforcement powers.[223]

This raises the question of: Should the competence to issue and verify A1 forms be transferred to the host Member State? After all, the work being conducted is happening on their soil. This will be discussed further below, but first, the deficit of enforcement mechanisms should be addressed.

Lack of enforcement mechanisms

On the other side of the enforcement deficit is the fact that a host Member State has little to no enforcement mechanisms against fraudulent postings. The host Member State is the recipient of the postings and can observe fraudulent practices more easily, but at the same time, the only option for control is to contact the issuing institution of the home Member State and hope that they will cooperate.

An Internal Market Information System (IMI-system) has been implemented, which aims to *"facilitate the exchange of information between public authorities involved in the practical implementation of EU law."*[224] A survey of Member States on the practicality of the system - designed to foster collaboration - shows that collaboration is reliant on the goodwill of both parties. For instance, Austria highlights that communications with host Member States such as Slovenia and Poland are cumbersome.[225]

It is problematic that the host Member State's only mechanism in cases of fraud and lack of cooperation is via potentially time-consuming judicial proceedings. The weak enforcement framework leaves host Member State institutions powerless, whilst they wait for the next procedural step to be resolved rather than being able to take immediate action.

6.2.2. Rethinking the role of the host Member State

The lack of incentive for verification and enforcement from the home Member State, combined with the host Member State's lack of enforcement mechanisms, presents a significant challenge to the current framework. The introduction of further enforcement powers for the host Member State may prove beneficial. However, the ideal structure of such further mechanisms is unclear. Strengthening enforcement mechanisms for the host Member State weakens legal certainty for employers and workers who rely on the binding effect of an issued A1 form. Furthermore, granting the host Member State further enforcement powers undermines the fundamental EU principles of mutual trust and sincere cooperation between Member States.

Perhaps it would be desirable for the host Member State to be granted authority to disregard A1 forms outside of judicial proceedings in cases of abuse, or as a less intrusive option, the authority to temporarily suspend A1 forms if abuse is suspected. However, it must be kept in mind that these solutions would undermine the principle of legal certainty, which is the very purpose of the binding nature of the A1 form. This is likely why such solutions have not been proposed and are in my opinion unfeasible.

Another potential solution is granting the host Member State the authority to issue and verify A1 forms for workers posted within its territory. However, it must be remembered that A1 forms serve as a proof

[223] Rennuy 2022, p. 229.
[224] European Commission. Internal Market Information System.
[225] Eurofound 2020, p. 36.

that the worker continues to be insured under the home Member State's system and thus does not need to be registered in the host Member State. Therefore, it would be an administrative impracticality if the host Member State were responsible for issuing A1 forms and ensuring that the posting conditions are fulfilled. This could undermine the objective of the posting rule to facilitate freedom to provide services by reducing administrative burdens.

6.2.3. An interim solution?

Perhaps the solution is not transferring the entire burden to the host Member State, but in fostering greater cooperation from the beginning of a posting, rather than leaving the cooperative procedure to commence when indications of fraudulent postings occur. This could be envisioned as a joint decision-making process, in which both the home and host Member States actively participate in issuing A1 forms.[226] The challenge with this approach again lies in the incentive for both Member States to co-operate, and it could result in a complex and lengthy process for obtaining an A1 form if the involvement of institutions from both Member States were required. It can also be argued that such an approach may be contrary to the principles of freedom of movement, as the host Member State may wish to limit the number of posted workers entering the country.[227]

Another possible solution, proposed by Wispelaere and Pacolet, is based on the *source principle*, which is a system where social security contributions are paid to the home Member State, but are collected at the taxation level of the host Member State.[228] If the home Member State benefits from higher contribution rates under the source principle, it has less reason to tolerate fraudulent postings and greater economic incentive to monitor them. Additionally, the economic incentive for businesses to exploit the posting rule for financial gain would decrease. As a result, social security contributions would be paid at the host Member State level, while the administrative burden that the posting rule seeks to reduce would remain, as employers would not be required to pay contributions in a different Member State. Due to the complexities of how social security systems are arranged, such a setup would require a higher level of harmonisation. While this system may be beneficial in combatting social security fraud, it would create an additional administrative step for Member States and could in effect restrict freedom of movement. The approach has also been criticised as it may lead to *"workers paying higher social security contribution rates for the same level of social protection."*[229]

6.2.4. A complete revision of the rules?

A more drastic solution in the fight against fraud is a Union-wide harmonisation of social security systems. A system that has been proposed and discussed by scholars for many years is the idea of a so-called "*13th State*" (today, more accurately described as a 28th State), which essentially entails a fully harmonised, supranational social security system for workers moving within the European Union.[230]

The advantage of such a harmonised system is that administrative burdens will be removed, as workers moving within the Union will be subject to the same social security rules no matter where they are working. It would also serve to eliminate the ability to speculate on the economic benefits of various national systems, which the Coordination Regulations in their current form allow.

A Union-wide harmonisation would undoubtedly be challenging and may result in more disbenefits than benefits. As emphasised by Caroline Lakse in 1992, one of the downfalls of a complete harmonisation of the social security system is that the legislative body would become too far removed from the

[226] Rennuy 2022, p. 230.
[227] Pennings 2015, p. 118.
[228] Wispelaere & Pacolet 2015, p. 9.
[229] Pennings & Vonk 2023, p. 242.
[230] Lakse 1993, p. 516.

field of application.[231] The distinct characteristics of each Member State's welfare system make it difficult to create a single EU wide legislation that effectively addresses the diverse needs and unique challenges that they face. It is important to acknowledge that the social security systems of individual Member States reflect a unique social contract between that State and its citizens, which has evolved over time to meet specific national priorities.[232] As national priorities differ from state to state, the social security system of one Member State cannot simply be transferred and applied in another without extensive modification.

Furthermore, the ongoing proposals to amend the social security coordination rules, as discussed earlier, indicate the grave challenges Member States face in reaching consensus on social security matters. If the amendment of just a few rules has taken nearly a decade, a complete harmonisation of the system would likely be a very lengthy and politically difficult process.

Ultimately, harmonisation may not even be legally possible due to a lack of legal basis. Under the principle of conferral in Article 5(1) TEU, EU legislators can only act within the competences conferred upon them by the Member States.[233] Article 48 of the TFEU, which serves as a legal basis for the existing coordination rules, only permits coordination.[234] Therefore it cannot serve as a legal basis for harmonisation. However, Article 153 TFEU may provide a legal basis for further harmonisation in the field of social security, as it provides mechanisms to achieve the social policy objectives set out in TFEU Article 151.[235] However, the competence conferred upon the EU is limited, as the provision states that EU measures may not undermine the Member States' authority to define the *fundamental principles* of their social security systems.[236] This reflects reluctance from Member States to grant the EU powers to harmonise social security systems.[237] Since the potential for harmonisation under TFEU Article 153 has not been exercised, the extent of this legal basis for harmonisation remains uncertain.[238] Furthermore the principle of subsidiarity imposes an additional barrier.[239] It limits EU involvement in areas that do not fall within its exclusive competence, to instances where the objectives of the proposed action cannot be sufficiently achieved by Member States alone.[240] This means that the EU would have to justify that the objectives of social policy in Article 151 TFEU cannot be achieved without harmonisation at EU level.

Although complete harmonisation may reduce abuse, it remains, more of a theoretical possibility than a practical reality.

6.2.5. An ideal solution?

The social security coordination framework is undeniably in need of reform to combat abuse. However, the complexity of the current framework - alongside the conflicting objectives of promoting free movement, protecting workers' rights and preventing abuse - makes it particularly difficult to identify an ideal solution. Enhanced enforcement powers for the host Member State or further harmonisation of the rules could help reduce abuse, but such measures would inevitably come at the expense of freedom of movement. In addition, the political challenge of achieving consensus among 27 Member States further complicates efforts to effectively address abuse of the EU's social security systems.

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[231] Lakse 1993, p. 518.
[232] Paju 2017, p. 10
[233] Sørensen & Danielsen 2025, p. 138.
[234] Fuchs and Cornelissen 2015, p. 35.
[235] Pennings 2015, p. 320.
[236] TFEU Art. 153(4).
[237] Pennings 2015, p. 322.
[238] Fuchs and Cornelissen 2015, p. 34.
[239] Pennings 2015, p. 320 f.
[240] TEU Art. 5(3); Social policy is a shared competence between the EU and Member States, cf. TFEU Art. 4(2)(b).

7. Conclusion

In this thesis, I have examined how EU social security Regulations are structured and how their current design leaves them open to abuse. By focusing on the A1 form, I have highlighted its central role in the coordination of social security systems across the EU. I have then explored the relevant procedural rules, outlining the scope of Member States' duty to cooperate. In addition, I have analysed key CJEU case law, highlighting the conditions under which host Member State courts may disregard A1 forms in cases of abuse. Finally, I have critically examined the current legal framework and explored potential avenues for reform aimed at preventing abuse related to social security systems.

It can be concluded that the diversity of national social security systems within the European Union - particularly differences in contribution levels - create incentives for strategic exploitation by companies and regulatory competition between Member States. These incentives are facilitated by the Coordination Regulations, which create opportunities for abuse. These incentives for abuse stem partly from ambiguities in the conditions necessary for invoking the posting rule in Article 12(1) Basic Regulation, and partly from the obligation for Member States to respect issued A1 forms.

A1 forms play a central role in the coordination of social security systems and serve as an official confirmation that a posting is genuine and that the conditions for applying the favourable posting rule are met. However, the binding nature of the A1 form, combined with limited incentives for authorities to verify and enforce compliance with its underlying conditions, creates significant challenges. In practice, this allows employers to hide behind the binding effect of the A1 form - even in cases where it is evident that the conditions for invoking the posting rule are not fulfilled.

It is evident that the CJEU has taken steps to address this issue by extending the general principle of abuse to the domain of social security coordination. In doing so, the Court has gradually worked toward clarifying the concept of abuse in this context. It can be concluded that, in cases of abuse, the binding nature of the A1 form may be disregarded by the courts of the host Member State. However, the precise threshold for when abuse occurs remains unclear.

A revision of the Coordination Regulations would be beneficial in addressing abuse. It is desirable that the institutions of the host Member State are granted stronger enforcement mechanisms, as the current framework for addressing abuse is a slow and cumbersome process. Precisely how the Coordination Regulations should be revised cannot be concluded with certainty.

Designing a future regulatory framework will require a careful balance between safeguarding freedom of movement, protecting workers' rights and preserving the integrity of national social security systems.

8. Bibliography

Legislation

Abbreviation	**Full reference**
TFEU	*Treaty on the Functioning of the European Union.* Consolidated version, 2012 O.J. C 326.
TEU	*The Treaty on European Union,* Consolidated version, 2012 O.J. C 326.
The European Charter of Fundamental Rights	*Charter Of Fundamental Rights Of The European Union (2000/C 364/01)*

Basic Regulation	Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
Implementing Regulation	Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security system.
Regulation 1408/71	Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.
Regulation 574/72	Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community.
Regulation 3	Regulation (EEC) No. 3 of 25 September 1958, *OJ* No. 30 of 16 December 1958.
Regulation 4	Regulation (EEC) No. 4 of 3 December 1958, *OJ* No. 30 of 16 December 1958.
Posted Workers Directive	Directive 96/71 of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, Consolidated version, 2020.
Enforcement Directive	Directive 2014/67 of the European Parliament and of the Council of 15 May 2014 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 the administrative cooperation through the Internal Market Information System ('the IMI Regulation').

Case Law - Alphabetical order by abbreviation

Abbreviation	**Full reference**
A-Rosa Flussschiff	C-620/15, *A-Rosa Flussschiff*
Alpenrind	C-527/16, *Alpenrind and Others*
Altun	C-359/16, *Altun*
Banks and Others	C-178/97, *Banks and Others*
Centros	C-212/97, *Centros*
CILFIT	C-283/81, *CILFIT*

Commission v Belgium	C-356/15, *Commission v Belgium*
Commission v Belgium (2012)	C- 577/10, *Commission v Belgium*
DRV Intertrans	C-661/21, *DRV Intertrans*
EX	C-421/23, *EX*
FTS	C-202/97, *FTS*
Halifax and Others	C- 255/02, *Halifax and Others*
Herbosch Kiere	C-2/05, *Herbosch Kiere*
Inspecteur van de Belasting-dienst	C-631/17, *Inspecteur van de Belastingdienst*
Plum	C-404/98, *Plum*
Rush Portuguesa	C-113/89, *Rush Portuguesa*
TEAM POWER EUROPE	C-784/19, *TEAM POWER EUROPE*
Vueling Airlines	Joined Cases C-370/17 and C-37/18, *Vueling Airlines*
Walltopia	C-451/17, *Walltopia*
Zakład	C- 422/22, *Zakład Ubezpieczeń Społecznych Oddział w Toruniu*

Soft Law – Alphabetical order by abbreviation

Abbreviation	Full reference
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Decision No A1	European Commission, "Decision No A1 of 12 June 2009 concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council", (2010/C 106/01)
Decision No A2	The Administrative Commission, "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".

Decision No A3	DECISION No A3 of 17 December 2009 concerning the aggregation of uninterrupted posting periods completed under the Council Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 of the European Parliament and of the Council.
Decision No H5	DECISION No H5 of 18 March 2010 concerning cooperation on combating fraud and error within the framework of Council Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council on the coordination of social security systems.
La Hulpe Declaration	La Hulpe Declaration on the Future of the European Pillar of Social Rights, 16 April 2024.
Practical guide	The Administrative Commision, "Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland".
Recommendation No A1	RECOMMENDATION No A1 of 18 October 2017 concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council.
Zakład GA opinion	C-422/22, *Zakład Ubezpieczeń Społecznych Oddział w Toruniu,* OPINION OF ADVOCATE GENERAL RICHARD DE LA TOUR.

Proposals and Institutional files - Alphabetical order by abbreviation

Abbreviation	**Full reference**
Annexes Commission work programme 2025	ANNEXES to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Commission work programme 2025, Strasbourg, 11.2.2025 COM(2025) 45 final ANNEXES 1 to 5.
Introduction of a European Social Security pass for improving the digital enforcement of social security rights and fair mobility	*Introduction of a European Social Security pass for improving the digital enforcement of social security rights and fair mobility European Parliament resolution of 25 November 2021 on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility (2021/2620(RSP))* P9_TA(2021)0473[https://www.europarl.europa.eu/doceo/document/TA- 9-2021-0473_EN.pdf].
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