

Withdrawal of an A1 Certificate on the Initiative of the Issuing Institution¹

Judgment of the Court of Justice of the European Union of 16 November 2023, C-422/22, *Zakład Ubezpieczeń Społecznych Oddział w Toruniu v. TE*²

Articles 5, 6 and 16 of 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, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, must be interpreted as meaning that the institution that issued an A1 certificate which, following a review of its own motion of the evidence on which the issue of that certificate is based, finds that evidence to be incorrect, may withdraw that certificate without first initiating the dialogue and conciliation procedure laid down in Article 76(6) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation No 465/2012, with the competent institutions of the Member States concerned with a view to determining the national legislation applicable.

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Commentary

Background

On 16 November 2023, the Court of Justice of the European Union (hereafter: CJEU) delivered its ruling in case C-422/22, *ZUS Oddział w Toruniu v. TE*³, concerning the issue

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² ECLI:EU:C:2023:869.

³ Judgment of the Court of Justice of the European Union of 16 November 2023 in case C-422/22, *Zakład Ubezpieczeń Społecznych Oddział w Toruniu v. TE* (hereafter: CJEU judgment in C-422/22).

of a PD A1⁴ in a cross-border situation within the framework of posting workers in the internal market of the European Union, with its ramifications regarding social security (rather than labor law⁵). While the guidance of CJEU has been actively requested in recent years concerning requests to issuing institutions for withdrawal of A1 certificates from institutions of other Member States,⁶ the present ruling constitutes the first time the CJEU has dealt with the withdrawal of a PD A1 on the initiative of the issuing competent institution.⁷ A pertinent legal issue is also whether the withdrawal of the A1 certificate at issue in the main proceedings required (or perhaps it did not) the prior exhaustion of the coordination procedure provided for by Regulation 987/2009, and specifically a dialogue procedure provided for in Decision A1 of the Administrative Commission.

Introduction

Posting of workers, which in colloquial terms means the fulfilment of a specific commission for the benefit of a contracting party based on the capital and personnel resources of the commission taker, is linked to the natural processes of an open and free market built up within the Member States of the European Union, and the Union legislator has positioned this legal institution systemically as a part of the provisions of the Treaty governing the freedom to provide services.⁸ Therefore, posting of workers is to be differentiated from migration to another EU Member State pursuant to the Treaty's free movement of workers (Article 45 *et seq.* TFEU), as posted workers are employees who are sent by their employer to carry out a service in another EU Member State on

⁴ The certificate declaring that the social security legislation of the issuing Member State applies and confirms that the person concerned therefore has no obligation to pay social security contributions in another Member State, cf. F. De Wispelaere, L. De Smedt, J. Pacolet, *Posting of workers: Report on A1 Portable Documents issued in 2023*, Luxembourg 2025, p. 10. Throughout our commentary, we use the terms "PD A1" and "A1 certificate" interchangeably.

⁵ In this regard, cf., for example, M. Benio, *Nowelizacja zasad delegowania pracowników*, EPS 2018, no. 6, pp. 12–21; M. Kielbasa, "Nowy wspariały świat (delegowania pracowników)?", czyli o zasadności (niektórych) zmian w delegowaniu pracowników w Unii Europejskiej słów kilka [in:] *Verba volant, scripta manent: księga jubileuszowa dedykowana profesor Bogusławie Gnelli*, eds. A. Kaźmierczyk, K. Michałowska, M. Szaraniec, Warszawa 2023, pp. 402–412; *idem*, *Prawa socjalne w Unii Europejskiej a granice swobod rynku wewnętrznego*, Warszawa 2017, p. 178 *et seq.*

⁶ Cf., for example, CJEU judgments in C-359/16, *Altun and Others*, and more recently in C-410/21 and C-661/21, *DRV Intertrans*.

⁷ Cf. N. Langlois, *A1 certificate withdrawal upon initiative of the issuing institution: What procedure applies?* (Case C-422/22, *Zakład Ubezpieczeń Społecznych Oddział w Toruniu*), <https://eulawlive.com/analysis-a1-certificate-withdrawal-upon-initiative-of-the-issuing-institution-what-procedure-applies-case-c-422-22-zaklad-ubezpieczen-spolecznych-oddzial-w-toruniu-by-nicolas-l/#> [accessed: 2025.04.03].

⁸ Cf. M. Tomaszewska, *Rozdział 9. Delegowanie pracowników a migracja pracowników w ramach świadczenia usług* [in:] *System prawa pracy*, t. 10: *Międzynarodowe publiczne prawo pracy. Standardy europejskie*, ed. K.W. Baran, Warszawa 2020, p. 282.

a temporary basis. As such, the legal regulation of posting of workers is a side-effect of the desire to establish a single market for services.⁹ The free movement of services also allows self-employed persons to deliver services in other Member States than their country of establishment. Rather than moving to other countries independently (as “migrant workers,” under Article 45 *et seq.* TFEU), posted workers are sent as part of a cross-border service provided by their employer (or by themselves) under Article 56 *et seq.* TFEU.¹⁰

In 2023 5.5 million PDs A1 were issued by all reporting EU/EFTA countries and the UK. Between 2012 and 2023, the number of PDs A1 issued more than tripled.

Poland and Germany have consistently issued by far the most PDs A1. Germany leads in the number of PDs A1 issued under Article 12, while Poland is first in the number of PDs A1 issued under Article 13.¹¹ According to the latest available data, in 2023 ZUS (the Polish social security agency) issued 849,523¹² PDs A1; in 2024 that number rose to 853,274.¹³

1. The state of play of the judgment of the CJEU commented on here

The state of play in the present case has unfolded as follows: TE – a businessman registered in the Polish business register and pursuing a self-employed activity – signed a contract with a company established in Warsaw under which he was required to provide certain services in France, in the context of a specific project. On the basis of that contract, a PD A1 was issued by ZUS under Article 13(2)(b) of Regulation No 883/2004,¹⁴ certifying, pursuant to Article 19(2) of Regulation No 987/2009,¹⁵ that TE was covered by Polish social security. Following a *ex post* review of its own motion, ZUS established that, during the period at issue, TE pursued his activity in one Member State only: France. Thus, by a decision of 1 December 2017, ZUS withdrew the A1 certificate and found that, in accordance with Article 11(3)(a) of Regulation 883/2004, TE was not subject to Polish legislation during that period. The Polish

⁹ Cf. C. Barnard, *The Substantive Law of the EU: The Four Freedoms*, Oxford 2015, p. 365.

¹⁰ For more on the subject, see: M. Kielbasa, M. Szaraniec, M. Mędrala, M. Benio, *Posting of workers from and to Poland. Facts and Figures*, 2022, Leuven: POSTING.STAT project VS/2020/0499, p. 34 *et seq.*; J. Grygutis, *Status prawny pracownika delegowanego na rynku wewnętrznym Unii Europejskiej*, Warszawa 2023, p. 11 *et seq.*

¹¹ Cf. F. De Wispelaere, L. De Smedt, J. Pacolet, *Posting of workers...*, pp. 11–13.

¹² *Ibid.*, p. 20.

¹³ Cf. A. Szybkie, K. Delert-Urban in their address on behalf of ZUS during the European Labour Mobility Congress 2025 in Krakow on 18.02.2025.

¹⁴ Regulation (EC) No 883/2004 of the EP and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.04.2004, p. 1 (hereafter: Regulation 883/2004).

¹⁵ Regulation (EC) No 987/2009 of the EP 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, OJ L 284, 30.10.2009, p. 1 (hereafter: Regulation 987/2009).

institution adopted that decision without having first followed the procedure referred to in Article 16 of Regulation No 987/2009.

TE brought an action before the Regional Court in Toruń against this decision. That court considered, first, that, TE did not actually work in a single Member State and, accordingly, he was covered by Article 13(2) of Regulation 883/2004, and, secondly that ZUS had not exhausted the compulsory coordination procedure provided for in Articles 6, 15, and 16 of Regulation No 987/2009. In order to avoid a situation in which TE would not be covered by any social security scheme, the Regional Court held that, during the period at issue, TE was subject to Polish legislation and, consequently, maintained the A1 certificate for him. Subsequently, by a judgment of 5 February 2020, the Court of Appeal in Gdańsk, Poland, dismissed the appeal brought by ZUS against the above-mentioned judgment of the Regional Court, thereby upholding it.

ZUS brought an appeal on a point of law against that judgment before the Supreme Court of Poland, the referring court, claiming that, since the withdrawal of the A1 certificate at issue in the main proceedings required the prior exhaustion of the coordination procedure provided for by Regulation 987/2009, the decision at issue was vitiated by an irregularity which could be remedied only in the context of the proceedings brought before ZUS itself.¹⁶

2. Pertinent legal issue(s)

The judgment under review refers to issues that have been summarized by the referring court as follows: “(1) Is the institution of a Member State which has issued an A1 [certificate] and which, of its own motion (without a request from the competent institution of the Member State concerned), intends to cancel/withdraw or invalidate the [certificate issued], obliged to make arrangements with the competent institution of another Member State in accordance with rules analogous to those set out in Articles 6 and 16 of [Regulation No 987/2009]? (2) Are the arrangements to be made even before the cancellation/withdrawal or invalidation of the [certificate issued], or is the cancellation/withdrawal or invalidation provisional in nature [...] and will become final in the event that the Member State institution concerned does not raise any objection or present a different view on the matter?”

In essence, then, the question is whether, in the light of the social security Coordination Regulations 883/2004 and 987/2009 and their interpretation in the case law of the CJEU, it is perhaps not the case that a PD A1 can only be withdrawn after a prior agreement between the competent institutions of the individual Member States concerned.

¹⁶ Cf. CJEU judgment in C-422/22, paragraphs 20–25.

3. The main elements of the Court's decision and an assessment of them

3.1. The PD A1 and its binding force

It should first be noted that the objective of the PDs A1, as well as that of rules relating to posting, is to facilitate the free movement of workers and the freedom to provide services.¹⁷ However, over the past few years, PDs A1 have become an object of desire for many workers and entrepreneurs temporarily providing services in another Member State of the EU.¹⁸ Indeed, confirmation through a PD A1 makes it possible to pay social security contributions in a home (sending) Member State during the temporary performance of work abroad. This allows the person to benefit from their home social security, which in the case of Poland and many other countries is associated with labor costs, including social security.¹⁹ In practice, this means that the person who holds the certificate is not covered by the social security system of the country where the work is carried out.²⁰

The Court found in this regard in the present case that the only provision of EU law which refers to the withdrawal of A1 certificates is Article 5 of Regulation 987/2009. Such a certificate, according to the CJEU, corresponds to a standard form issued, in accordance with Title II of Regulation 987/2009, by the institution designated by the competent authority of the Member State whose social security legislation is applicable.²¹

Article 5(1) of Regulation 987/2009 enforces the will of the EU legislator that documents issued by the institution of a Member State are to 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. Moreover, in Articles 5(2) and (4) of the Regulation 987/2009, detailed rules are provided for the application of a dialogue and conciliation procedure for the purpose of resolving disputes between the institution of the Member State which receives the documents (and the evidence) and the institution that issued those documents.²² More specifically, Article 5(2) and (3) specifies the steps which those institutions are to follow in the

¹⁷ Cf. the CJEU judgment in the Case C-2/05, *Herbosch Kiere*, ECLI: EU:C:2006:69, paragraph 20.

¹⁸ Cf. M. Szypniewski, *Ufać, ale kontrolować? Zasada lojalnej współpracy państw członkowskich Unii Europejskiej a zaświadczenie A1*, PiZS 2022, no. 2, pp. 27–28. See also: N. Rennuy, *Posting of workers: Enforcement, compliance and reform*, "European Journal of Social Security" 2020, vol. 22, no. 1, p. 214 *et seq.*

¹⁹ Cf. M. Szypniewski, *Ufać, ale kontrolować?...*, p. 27. The author rightly notes the discrepancies between the amounts of social security contributions: given the basis of an exemplary net remuneration of EUR 1,600, he points out that such contributions paid in the Netherlands would be EUR 496, in Portugal they would be EUR 81, and in Poland – EUR 350.

²⁰ The principle of *lex loci laboris*.

²¹ Cf. paragraphs 28–29 C-422/22. See the CJEU in C-410/21 and C-661/21, *DRV Intertrans*, paragraph 42 and the case-law cited therein. Cf. also Y. Jorens, *Cross-border EU Employment and its Enforcement: An Analysis of the Labour and Social Security Law Aspects and a Quest for Solutions*, Cham 2022, p. 286 *et seq.*

²² Cf. CJEU judgment in C-422/22, paragraph 31.

event of doubt as to the validity of those documents/evidence/facts, by requiring the issuing institution to reconsider the grounds for issuing those documents and, if necessary, to withdraw them. Indeed, even the issuance of documents attesting to the application of a given host Member State's legislation does not prejudice the fact that doubts cannot be raised under Article 5 of Regulation 987/2009.²³ Article 5(4), for its part, provides that where no agreement is reached between the institutions concerned, the competent authorities may bring the matter before the Administrative Commission, which must endeavor to reconcile the points of view within six months.

Therefore, in this part, the CJEU contributed to the confirmation of the principle of validity of PDs A1. As Nicolas Rennuy puts it, the social security institutions of both States are linked by what Luca De Lucia calls an "interadministrative tie": "the host administration cannot (unilaterally) question the validity or appropriateness of the measure of other States" which has its effects in the State of destination.²⁴ A PD A1 issued by a home Member State is also binding, generally speaking, on the courts of the host Member State.²⁵ This applies "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."²⁶ Therefore, unless and until it is withdrawn or declared invalid, the PD A1 itself prevents that institution from subjecting workers to its legislation (Article 5 Regulation 987/2009). Thus, the binding value of the PD A1 is maintained, generally speaking, until it is withdrawn or invalidated by the issuing institution of the home Member State or by its courts.²⁷

We consider this confirmation useful and valid, especially as doubts concerning withdrawal may transpire.

3.2. Withdrawal of a PD A1 by the issuing institution of its own motion

The Court rightly notes that the withdrawal, as a part of the system established by Regulation 883/2004, requires effective and close cooperation both between the competent institutions of the various Member States and between those institutions

²³ Cf. D. Dzienisiuk, *Ubezpieczenia społeczne, koordynacja systemów zabezpieczenia społecznego, zaświadczenie A1. Glosa do wyroku SN z dnia 18 stycznia 2017, III UK 42/16*, OSP 2018, no. 2, p. 20.

²⁴ Cf. L. De Lucia, *From Mutual Recognition to EU Authorization: A Decline of Transnational Administrative Acts?*, "Italian Journal of Public Law" 2016, vol. 8, no. 1, p. 100–101. Cf. also, M. Eliantonio, *Information Exchange in European Administrative Law: A Threat to Effective Judicial Protection?*, "Maastricht Journal of European and Comparative Law" 2016, vol. 23, no. 3, pp. 531–549.

²⁵ Cf., for example, CJEU judgment in C-527/16, *Alpenrind*, paragraphs 38–48.

²⁶ See also: N. Rennuy, *Posting of workers...*, pp. 215–216. However, the courts of such a State may on certain occasions disregard PDs A1 obtained or relied upon in a fraudulent manner: cf., for example: CJEU judgments in C-356/15, *Commission v. Belgium*, paragraph 93 *et seq.*; C-410/21 and C-661/21, *DRV Intertrans*, paragraph 67.

²⁷ See in this regard the extensive account of D.C. Bermejo and J.M. Millán in *The binding nature of posting PDA1 issued under EU social security Coordination Regulations and the possible role of national courts*, "ERA Forum" 2023, vol. 24, pp. 69–103.

and persons concerned.²⁸ That cooperation requires all those institutions and persons to exchange the data necessary for determining the rights and obligations of those institutions and persons, as is apparent from Articles 2 and 3 of Regulation No 987/2009, and from Article 20 of that Regulation. Thus, as Advocate General Richard de La Tour observes in point 53 of his Opinion, although the issuing institution wishing to withdraw an A1 certificate of its own motion because of the inaccuracy of the particulars contained in it, does not have to initiate beforehand the dialogue and conciliation procedure with the competent institutions of the Member States concerned, the provisions referred to in paragraphs 53 and 54 of the judgment, by contrast, require that institution, once that withdrawal has taken place, to inform, as soon as possible, both those institutions and the person concerned of that withdrawal and to communicate to them all the information and data necessary for the purposes of establishing and determining that person's rights.²⁹

3.3. Protection of persons moving within the European Union

The principles of preventing lack of social security or coverage ('negative conflict rule') as well as preventing the simultaneous application of two or more national laws ('positive conflict rule') are primary objectives and the greatest achievement of the coordination of social security systems in the EU. Concerning the latter, the so-called *principle of uniqueness* of the applicable law³⁰ prevents double contributions as well as the receipt of benefits from two or more systems in the event of the same social contingency. The most important effect of this principle, however, is that an insured person's rights to social security are not jeopardized when crossing internal EU borders. One of the most important issues of the judgement in question is the fear that the *ex post* withdrawal of PD A1 may lead to a lack of social security coverage – a phenomenon rightly referred to as 'dropping out' of the scope of social security coordination Regulations (and the scope of protection guaranteed by the Treaty).³¹ This is why the courts in Poland had doubts if the dialogue and conciliation procedure should not be obligatory in this case and referred the preliminary question. The CJEU rightly points out³² that a PD A1 does not have constitutive power and, thus, its withdrawal has no influence on social security protection. The legislation of another Member State is applicable automatically. Only in a case in which the competent institution of that Member State disagrees with such a conclusion would the dialogue and conciliation procedure take place. Therefore, in the absence of any specific provision for such a procedural obligation where the issuing institution wishes to withdraw a PD A1 of its own motion (for example, where

²⁸ CJEU judgment in C-422/22, paragraph 54.

²⁹ *Ibid.*, paragraph 55.

³⁰ Cf. D.C. Bermejo, J.M. Millán, *The binding nature of posting PDA1...*, p. 10.

³¹ Cf. A. Szybkie, *Weryfikacja ustawodawstwa właściwego a ochrona pracownika migrującego na gruncie prawa Unii Europejskiej o koordynacji systemów zabezpieczenia społecznego*, PPIA 2022, vol. 130, p. 70.

³² CJEU judgment in C-422/22, paragraph 48.

it found that it had been issued incorrectly), it is not obliged to engage in a dialogue and conciliation procedure.³³ Such a conclusion is not at all to be taken for granted, as shown by the latest judgment of the Court in ONSS. The CJEU went so far as to rule that the very procedure constituted a compulsory precondition even for determining fraud, by a court of a receiving Member State hearing criminal proceedings against a posting entrepreneur having fraudulently used posting of workers (under cover of false PDs A1) where such entrepreneur himself did not contradict a charge of using false PDs A1(!).³⁴

In this regard, we welcome the concerns of the Court regarding the protection of the insured persons, as well as effective and close cooperation between social security institutions. As to the former, the CJEU recalls that the provisions of Title II of Regulation 883/2004 constitute a complete and uniform system of conflict rules which are intended also to ensure that the persons covered by that regulation are not left without social security cover because there is no legislation which is applicable to them³⁵. In that context, the Court recalls that Article 6 of Regulation 987/2009 provides for the provisional application of legislation (and for provisional granting of benefits) in the event of a difference of views between the institutions of two or more Member States regarding the determination of the legislation applicable – and suggests its use to ensure that that worker is subject, at all times, even in the event of such a dispute, to a single national legislation³⁶.

When it comes to the above-mentioned cooperation – we consider it a (welcome) reminder that the Court requires that the issuing institution, wishing to withdraw an A1 certificate of its own motion, once that withdrawal has taken place to inform as soon as possible both institutions abroad and the person concerned of that withdrawal and to communicate to them all necessary information for the purposes of establishing and determining the affected person's rights.³⁷

³³ *Ibid.*, paragraph 39. This was confirmed by the Polish referring (Supreme) Court in the judgment following the CJEU's judgment, 10.01.2024, file no. II UKSP 113/21. It reiterated that the issuing institution which, following an ex officio re-examination of the information on which the issuance of this certificate was based, establishes the falsity of that information, may withdraw the PD A1 in question without first initiating the dialogue and conciliation procedure with the competent institutions of the Member States concerned. Thus, the Supreme Court concluded that there was no obstacle to the Court of Second Instance's ruling on the merits stating that Article 13(2)(b) of Regulation 883/2004 applied in the case before the national court.

³⁴ Cf. CJEU judgment of 23 January 2025 in case C-421/23, ONSS, paragraph 63.

³⁵ *Ibid.*, paragraph 50. See also CJEU judgment in case C-631/17, *Inspecteur van de Belastingdienst*, paragraph 33.

³⁶ *Ibid.*, paragraphs 49, 51 and 52.

³⁷ *Ibid.*, paragraph 55. See also: V. Holubec, *Binding effect of the A1 Certificate in the case-law of the Court of Justice of the European Union* [in:] *Liber Amicorum Bernhard Spiegel*, Brussels 2024, p. 129.

Conclusions

The judgment in case C-422/22 fills a legal gap concerning the situation of the unilateral withdrawal of a PD A1 by the issuing institution when there is no discrepancy between the competent institutions³⁸. It has confirmed that the loyal cooperation between competent social security authorities does not always require a formal dialogue and conciliation procedure. On the contrary, it runs more smoothly when they inform each other about changes of circumstances influencing the applicable legislation. Equally important is the confirmation of the declaratory character of an A1 certificate and confirmation of temporary coverage in the event of doubts on which legislation is applicable. Indeed, the CJEU went to great lengths to ensure (at least verbally) that rights to social security of TE, the self-employed insured person, who was the subject in this case, were secured at every stage. Thus, the primary purpose of the social security coordination mechanisms was fulfilled.

Literature

- Barnard C., *The Substantive Law of the EU. The Four Freedoms*, Oxford 2015.
- Benio M., *Nowelizacja zasad delegowania pracowników*, "Europejski Przegląd Sądowy" 2018, no. 6.
- Bermejo D.C., Millán J.M., *The binding nature of posting PDA1 issued under EU social security Coordination Regulations and the possible role of national courts*, "ERA Forum" 2023, vol. 24.
- De Lucia L., *From Mutual Recognition to EU Authorization: A Decline of Transnational Administrative Acts?*, "Italian Journal of Public Law" 2016, vol. 8, no. 1.
- De Wispelaere F., De Smedt L., Pacolet J., *Posting of workers. Report on A1 Portable Documents issued in 2023*, Luxembourg 2025.
- Dzienisiuk D., *Ubezpieczenia społeczne, koordynacja systemów zabezpieczenia społecznego, zaświadczenie A1. Glosa do wyroku SN z dnia 18 stycznia 2017, III UK 42/16*, "Orzecnictwo Sądów Polskich" 2018, no. 2.
- Eliantonio M., *Information Exchange in European Administrative Law: A Threat to Effective Judicial Protection?*, "Maastricht Journal of European and Comparative Law" 2016, vol. 23, no. 3.
- Grygutis J., *Status prawny pracownika delegowanego na rynku wewnętrznym Unii Europejskiej*, Warszawa 2023.
- Holubec V., *Binding effect of the A1 Certificate in the case-law of the Court of Justice of the European Union* [in:] *Liber Amicorum Bernhard Spiegel*, Brussels 2024.
- Jorens Y., *Cross-border EU Employment and its Enforcement. An Analysis of the Labour and Social Security Law Aspects and a Quest for Solutions*, Cham 2022.
- Kielbasa M., *"Nowy wspaniały świat (delegowania pracowników)?"*, czyli o zasadności (niektórych) zmian w delegowaniu pracowników w Unii Europejskiej słów kilka [in:] *Verba volant, scripta ma-*

³⁸ Cf. D.E. Lach, *Procedura wycofania zaświadczenia A1 a wsteczne włączenie delegowanego pracownika do systemu zabezpieczenia społecznego państwa wykonywania pracy*, PZiS 2022, no. 8, p. 39. The Author rightly assumed (before the judgment of the CJEU) that the issuing institution is not obliged to carry out any 'reconciliation procedure' (p. 35).

- nent: *księga jubileuszowa dedykowana profesor Bogusławie Gneli*, eds. A. Kaźmierczyk, K. Michałowska, M. Szaraniec, Warszawa 2023.
- Kiełbasa M., *Prawa socjalne w Unii Europejskiej a granice swobód rynku wewnętrznego*, Warszawa 2017.
- Kiełbasa M., Szaraniec M., Mędrala M., Benio M., *Posting of workers from and to Poland. Facts and figures*, 2022, Leuven: POSTING.STAT project VS/2020/0499.
- Lach D.E., *Procedura wycofania zaświadczenia A1 a wsteczne włączenie delegowanego pracownika do systemu zabezpieczenia społecznego państwa wykonywania pracy*, „Praca i Zabezpieczenie Społeczne” 2022, no. 8.
- Langlois N., *A1 certificate withdrawal upon initiative of the issuing institution: What procedure applies? (Case C-422/22, Zakład Ubezpieczeń Społecznych Oddział w Toruniu)*, <https://eulaw-live.com/analysis-a1-certificate-withdrawal-upon-initiative-of-the-issuing-institution-what-procedure-applies-case-c-422-22-zaklad-ubezpieczen-spolecznych-oddzial-w-toruniu-by-nicolas-l/#>.
- Tomaszewska M., *Rozdział 9. Delegowanie pracowników a migracja pracowników w ramach świadczenia usług* [in:] *System prawa pracy*, t. 10: *Międzynarodowe publiczne prawo pracy. Standardy europejskie*, ed. K.W. Baran, Warszawa 2020.
- Rennuy N., *Posting of workers: Enforcement, compliance and reform*, “European Journal of Social Security” 2020, vol. 22, no. 1.
- Szybkie A., *Weryfikacja ustawodawstwa właściwego a ochrona pracownika migrującego na gruncie prawa Unii Europejskiej o koordynacji systemów zabezpieczenia społecznego*, „Przegląd Prawa i Administracji” 2022, vol. 130.
- Szypniewski M., *Ufać, ale kontrolować? Zasada lojalnej współpracy państw członkowskich Unii Europejskiej a zaświadczenie A1*, „Praca i Zabezpieczenie Społeczne” 2022, no. 2.

Summary

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Withdrawal of an A1 Certificate on the Initiative of the Issuing Institution

The CJEU ruling in case C-422/22 confirms the importance of dialogue and conciliation in cases concerning the determination of social security legislation applicable in cross-border situations. A portable document certifying the applicable legislation of one Member State (a PD A1) is a declaratory decision. It remains in force until the competent institution that issued it withdraws it or invalidates it. This principle increases legal certainty and guarantees to the insured person the enforcement of the most important benefits of social security coordination, namely: avoidance of double contributions and double social security benefits, protection of acquired rights and rights in course of acquisition, and, above all, protection against the loss of social security upon crossing the EU internal borders. The preliminary question of the Supreme Court (Poland) to CJEU referred to the need for the Polish Social Insurance Institution (ZUS) to enter into a dialogue procedure with the competent French institution (Urssaf) before withdrawing the PD A1 in a situation where it was established *ex post* that there were no grounds for its issuance under Article 13 of Regulation 883/2004/EU of the European Parliament and of the Council on the coordination of social security systems. The Court confirmed that that procedure is intended to

resolve discrepancies in the assessment of which legislation is applicable between two or more competent institutions. However, it is not required as a prerequisite for withdrawing the A1 certificate on its own initiative by the issuing institution.

Keywords: Portable Document A1, PD A1, withdrawal of a PD A1, binding effect of a PD A1, A1 Certificate, posting of workers, social security, Court of Justice of the European Union, CJEU.

Streszczenie

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Wycofanie poświadczenia A1 z inicjatywy instytucji wydającej

Orzeczenie TSUE w sprawie C-422/22 potwierdza znaczenie postępowania dialogu i konsultacji w sprawach dotyczących ustalania ustawodawstwa z zakresu zabezpieczenia społecznego mającego zastosowanie w sytuacjach transgranicznych. Dokument poświadczający ustawodawstwo jednego państwa członkowskiego (A1) ma charakter decyzji deklaratoryjnej i pozostaje w mocy do czasu, aż instytucja właściwa, która go wydała, nie wycofa go lub unieważni. Ta zasada zwiększa pewność obrotu prawnego i gwarantuje ubezpieczonemu realizację najważniejszych korzyści płynących z koordynacji systemów zabezpieczenia społecznego, a mianowicie: unikanie podwójnych składek oraz podwójnych świadczeń z ubezpieczeń społecznych, ochronę praw nabytych i praw w trakcie ich nabywania, a nade wszystko ochronę przed utratą zabezpieczenia społecznego w razie przekroczenia granicy wewnętrznej UE. Pytanie prejudycjalne dotyczyło konieczności przeprowadzenia procedury dialogu przez ZUS z francuską instytucją właściwą Francji (Urssaf) przed wycofaniem poświadczenia A1 w sytuacji stwierdzonego *ex post* braku przesłanek do jego wydania na podstawie art. 13 rozporządzenia Parlamentu Europejskiego i Rady 883/2004/UE w sprawie koordynacji systemów zabezpieczenia społecznego. Trybunał potwierdził, że procedura ta służy rozstrzygnięciu rozbieżności w ocenie, które ustawodawstwo ma zastosowanie między dwiema lub więcej instytucjami właściwymi. Nie jest jednak wymagana jako warunek wstępny do wycofania poświadczenia A1 z własnej inicjatywy instytucji je wydającej.

Słowa kluczowe: dokument poświadczający, zaświadczenie A1, wycofanie A1, moc wiążąca zaświadczenia A1, certyfikat A1, delegowanie pracowników, zabezpieczenie społeczne, Trybunał Sprawiedliwości Unii Europejskiej, TSUE.