

European Union: New interpretation of the ‘substantial activities’ concept for posted workers and social security purposes

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In brief

The Court of Justice of the European Union (the CJEU) has given judgment in a case regarding a Bulgarian temporary work agency, Team Power Europe (TPE).

TPE did not provide services to any customers in Bulgaria and the CJEU reaffirms that this prevents the company from obtaining A1 certificates when posting employees to other EU/EEA countries as the company did not have substantial activities in Bulgaria.

However, the CJEU judgement did also provide new interpretations to the concept of ‘substantial activities’ in the country of establishment which may have relevance to other companies.

In detail

The CJEU Judgement

TPE was a temporary work agency established in Bulgaria, which recruited employees in Bulgaria in order to send them to Germany to work for German companies. None of the employees worked for TPE in Bulgaria.

In its judgment, the CJEU builds on previous case law, which established the notion that a company must carry out ‘substantial activities’ in the home country in order to be able to obtain A1 certificates maintaining the employees’ home social security during temporary postings to other EU/EEA-countries.

In this specific case, the Court found that it was the actual service delivery (i.e. the sending of temporary workers) and not the recruitment of those workers that essentially decided whether TPE had ‘substantial activities’ in Bulgaria or not.

Although the selection and recruitment of temporary agency workers contributed to TPE’s turnover, since those activities are an essential prerequisite for the subsequent assignment of the workers, the CJEU decided it was only the assignment of those workers to end users that actually generated turnover and therefore should be considered.

Further considerations – ‘Substantial activities’

Under current rules the concept of ‘substantial activities’ is determined by considering all criteria characterising the activities carried out by a company. The relevant criteria are specific depending on the characteristics of the company and the nature of the activities carried out. Purely internal management activities are excluded from ‘substantial activities.’

This new CJEU judgement also established that the activities of recruiting employees, in particular those relating to the selection and recruitment of temporary agency workers, cannot be regarded as ‘purely internal management activities.’ ‘Purely internal management activities’ cover only activities of an exclusively managerial nature which are intended to ensure the effective internal functioning of the undertaking.

The takeaway

Companies posting employees to other EU/EEA countries are still required to have substance in the home country in order to maintain home social security.

Based on the new CJEU judgment, it should be re-evaluated which activities can come into consideration when meeting the posting condition. This may provide some companies with further flexibility and a wider room for pursuing business in other EU/EEA countries compared to the business carried out in the home country.

Let’s talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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