

SUMMARY

ECJ 23 January 2025, case C-421/23 (ONSS (Faux certificats A 1)), Social insurance

EX in the presence of: Ministère public, Office national de sécurité sociale (ONSS), Belgium case

Summary

A national court hearing criminal proceedings against a contractor for committing social security fraud, must apply Regulation No 883/2004. The existence of documents in the form of A1 certificates, in no way affect the applicability of the Regulation, since Article 2 does not require the possession of such a certificate in order to fall within its personal scope.

Questions

Must Regulation No 883/2004 be interpreted as meaning that, in a situation in which nationals of a Member State employed by a contractor established in that Member State carry out, by means of documents in the form of A1 certificates purportedly issued by the institution of that Member State competent to issue that type of certificate, work on behalf of that contractor in another Member State, in respect of which that institution collects social security contributions, that regulation is to apply even where, in the course of criminal proceedings brought against that contractor before the courts of the latter Member State for the commission of social security fraud, those courts find, without being contradicted by the same contractor, that those documents are false documents?

Must Article 76(6) of Regulation No 883/2004 be interpreted as meaning that, in a situation in which nationals of a Member State employed by a contractor established in that Member State carry out, by means of documents in the form of A1 certificates purporting to be issued by the institution of that Member State competent to issue such certificates, work on behalf of that contractor in another Member State, in respect of which that institution collects social security

contributions, the dialogue and conciliation procedure referred to in that provision constitutes a compulsory precondition to the establishment, by a court of the latter Member State, seised in criminal proceedings brought against that contractor for having had recourse to the posting of those workers, under cover of false A1 certificates, of such fraud?

Must the principle of the prohibition on fraud and abuse of rights be interpreted as meaning that, where, in the context of criminal proceedings brought before the courts of a Member State against a contractor suspected of having posted workers to that State by means of documents in the form of A1 certificates, the tribunal de première instance de Namur (Court of First Instance, Namur) has found that those documents constitute false documents and that that finding has not been challenged before the court hearing the appeal, the latter court may refrain from taking those documents into account even though such a finding was made by the tribunal de première instance de Namur (Court of First Instance, Namur) without the dialogue and conciliation procedure referred to in Article 76(6) of Regulation No 883/2004 having been initiated?

Ruling

Regulation No 883/2004 must be interpreted as meaning that in a situation in which nationals of a Member State employed by a contractor established in that Member State carry out, by means of documents in the form of A1 certificates purportedly issued by the institution of that Member State competent to issue that type of certificate, work on behalf of that contractor in another Member State, in respect of which that institution collects social security contributions, that regulation is to apply even where, in the course of criminal proceedings brought against that contractor before the courts of the latter Member State for the commission of social security fraud, those courts find, without being contradicted by the same contractor, that those documents are false documents.

Article 76(6) of Regulation No 883/2004 must be interpreted as meaning that in a situation in which nationals of a Member State employed by a contractor established in that Member State carry out, by means of documents in the form of A1 certificates purportedly issued by the institution of that Member State competent to issue that type of certificate, work on behalf of that contractor in another Member State, in respect of which that institution collects social security contributions, the dialogue and conciliation procedure referred to in that provision constitutes a compulsory precondition for a finding, by a court of the latter Member State, seised in the context of criminal proceedings brought against that contractor for having fraudulently made use of the posting of those workers, under cover of false A1 certificates, of such fraud.

Creator: European Court of Justice (ECJ)

Verdict at: 2025-01-23

Case number: C-421/23