

EU social security coordination reform: posting of workers in the age of anticipation



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Finally adopted by the Council on 28 September 2026, the revision of Regulations (EC) No 883/2004 and No 987/2009 tightens the conditions for posting, requires the A1 certificate to be applied for in advance, and at last gives the review of certificates a clearly defined procedure. Its deferred application does not relieve employers of the need to take stock of it today.

KEY POINTS

- / **Three months** of prior affiliation (employees) or prior activity (self-employed) become a binding condition for posting.
- / The **A1 application** must be filed **before the activity begins**, subject to exemptions for business trips and very short activities, with construction excluded.
- / The **24-month ceiling** is retained, but replacements and successive postings are locked down.
- / A new **review procedure** for A1 certificates, with time limits and retroactive withdrawal.
- / Most rules apply only **24 months after entry into force**, which is itself still pending publication in the Official Journal.

Introduction

It has taken almost a decade for legislative file 2016/0397(COD) to reach its conclusion. Opened in December 2016 and stalled on several occasions, the revision of the rules coordinating social security systems ends with the Council's adoption of text PE-CONS 29/26, the final act of which was signed on 7 October 2026.

The reform covers a broad field. It expressly recognises long-term care benefits, now defined in Article 1(v b) of the basic Regulation, without harmonising national benefits. It reallocates responsibility for unemployment benefits for frontier workers: the State of last activity becomes, in principle, competent where the person has completed an uninterrupted period of at least twenty-two weeks of insurance, employment or self-employment there (new Article 65). Lastly, it strengthens cooperation between social security institutions, labour inspectorates and enforcement authorities (new Article 75a).

It is, however, in the field of worker mobility that its effects will be felt most directly in business practice. Here the text moves in two directions. First, it tightens the posting regime, by stiffening its conditions of access and bringing its formalities forward (I). Second, it renews the scrutiny of cross-border situations, whether through the challenge of A1 certificates or the determination of the legislation applicable to workers active in several States (II). It remains to identify precisely when these rules will become enforceable, and how employers can make the best use of the intervening period (III).

I. A tighter posting regime

Within the scheme of the Regulation, posting remains an exception to the *lex loci laboris* rule. The reform draws the consequences: it clarifies the conditions of access (A) and brings the formalities forward (B).

A. Conditions of access clarified and tightened

Prior affiliation becomes a quantified condition. For employees recruited with a view to being posted, Article 14(1) of Regulation No 987/2009 previously required only that they be subject to the legislation of the sending State "immediately before the start of their employment". Only Decision A2 of the Administrative Commission of 12 June 2009 gave substance to that wording, setting an indicative period of one month and leaving shorter periods to case-by-case assessment.

The new wording, introduced by Article 2(10)(a) of text PE-CONS 29/26, replaces that flexibility with a hard rule: the employee must have been subject to the legislation of the State in which the employer is established "for a period of at least three months immediately before the start of his or her employment". This should not be read as a seniority requirement: what counts is affiliation to the sending State's scheme, not the length of the employment relationship with the employer.

The same shift applies to self-employed persons. Article 14(3) required the activity to have been pursued "for some time" beforehand, which Decision A2 assessed at two months. The new text now imposes a minimum of three months' activity in the State of establishment. The wording differs slightly from that used for employees, however, as the word "immediately" does not appear.

The twenty-four-month ceiling is retained, but locked down. The new Article 12 of Regulation No 883/2004 keeps the maximum anticipated duration of twenty-four months, for employees and self-employed persons alike. It should be borne in mind that this ceiling limits continued coverage by the sending State's scheme, not the length of the assignment itself.

The reform does, however, close two doors that practice may have left ajar. Where a worker is replaced to complete the same work, the cumulative duration of the successive persons may not exceed twenty-four months: replacement does not reset the clock. In the case of successive postings to the same State, the new Article 14(1a) of the Implementing Regulation requires, after twenty-four months in total, an interval of at least two months before Article 12 may again be applied to the same person in the same State, save for an exception agreed under Article 16.

B. Formalities now required in advance

The principle: an A1 application before the activity begins. The new Article 15 of Regulation No 987/2009 requires the employer, or the self-employed person, to inform the competent institution and apply for the A1 certificate *before the activity begins* in the other Member State. The relevant moment is therefore the start of the activity, not the worker's physical departure.

The text does not, however, require the certificate to be issued by that time. Where it cannot be issued immediately, the institution issues an automatic acknowledgement of receipt, which serves as proof that notification has been made (paragraph 1a). That acknowledgement neither certifies the applicable legislation nor confirms that the substantive conditions for posting are met.

The exceptions: business trips and very short activities. Paragraph 1b exempts two distinct situations from these formalities, which must not be confused. The first covers business trips, a free-standing exemption with no numerical threshold, the benefit of which depends on the true nature of the trip. The second covers activities whose *total* duration does not exceed three consecutive working days within a period of thirty consecutive days. That adjective precludes reading it as an allowance renewable with each three-day assignment.

The construction sector is expressly excluded from the second exemption. The activities defined in the new Annex 6 — construction, repair, maintenance, alteration or demolition of buildings, as well as earthworks, renovation, painting, cleaning or remediation — thus remain subject to the prior application, however short the intervention. Nor can this exclusion be circumvented by labelling on-site work a business trip merely because it is brief.

In every case, these exemptions concern only the prior formalities, not the substantive conditions for remaining covered by the sending State's legislation. Paragraph 1c draws the evidential consequence: where no A1 has been issued, the employer must be able to produce, at the request of the institution of the State of activity, the acknowledgement of receipt or evidence that the exemption relied on applies.

A social security formality distinct from related schemes. The A1 application must not be confused either with the posting declaration required under labour law by Article 9 of Directive 2014/67/EU, or with the digital tools now being developed. The e-declaration for posted workers, on which the Council announced a provisional agreement on 23 June 2026, falls under a separate instrument: it does not amount to an A1 application, just as a social security exemption does not waive the labour law declaration. As for ESSPASS, referred to in the new recital 40c of the basic Regulation and covered by a separate proposal (COM(2026) 980 final), it is intended to digitise social security documents and make them verifiable, without altering the substantive conditions for posting.

II. Renewed scrutiny of cross-border situations

Beyond posting in the strict sense, the reform addresses the reliability of certificates and the correct determination of the applicable legislation. It organises the review of A1 certificates (A) and clarifies the concept of registered office at the heart of the rules on multi-State activity (B).

A. The A1 certificate put to the test of effective review

Binding force tempered by the fraud exception. In principle, the A1 certificate binds the institutions and courts of the host State for as long as it has not been withdrawn or declared invalid by the issuing State (Article 5 of Regulation No 987/2009). Since *Altun* (CJEU, 6 February 2018, C-359/16), however, that force is no longer absolute: when presented with concrete evidence of fraud, the issuing institution must carry out a review within a reasonable time, failing which the host State's court may disregard the certificate, subject to the guarantees of a fair trial.

The requirement of a substantive review. It is precisely the substance of that review that the Criminal Chamber of the French Court of Cassation clarified in a judgment of 9 June 2026 ([Cass. crim., 9 June 2026, No 24-85.090](#)). The issuing institution had simply refused to withdraw the certificates, without producing any document answering the evidence of fraud submitted by the Urssaf or carrying out the investigation it had announced. Such a response, the Court held, does not amount to an effective review: a purely formal confirmation of the certificates cannot prevent the court from disregarding them. The Court further stated that referral to the Administrative Commission remains optional.

It follows that the issuing institution must examine the evidence submitted to it and give a reasoned response; fraud, for its part, must be established in both its objective and subjective elements.

A procedure now clearly defined. The reform extends this requirement rather than creating it. The new Article 19a of Regulation No 987/2009 governs cooperation between institutions where a document is in doubt. The institution of the host State must state the reasons for its request and provide the relevant documents. The issuing institution then has thirty working days to withdraw or correct a document found to be incorrect or, where no error is found, to transmit all the evidence available to it. In cases of duly justified urgency, that period is reduced to ten working days, solely for the transmission of evidence. Where fraud is beyond doubt, withdrawal must take place without delay. If doubts persist, a fresh request may be made before the conciliation procedure under Article 5(5) is triggered.

*“The withdrawal or rectification shall have
retroactive effect.”*

Mindful of the harshness of that rule, the text nonetheless invites the States, where retroactivity would risk disproportionate consequences — foremost among them a loss of coverage in all the States concerned — to consider an agreed exception under Article 16 of the basic Regulation. Upstream, the new Article 19(3) requires a proper assessment of the relevant facts as soon as the certificate is issued.

Two routes therefore coexist, and they must not be confused: withdrawal or rectification by the issuing institution following review, on the one hand; and the setting aside of the certificate by the host State's court where the fraud exception is established, on the other. It follows that merely exceeding the thirty-day period does not in itself invalidate a contested AI; and that holding an AI offers no protection against criminal and financial exposure where the conditions for obtaining it were knowingly circumvented.

B. Multi-State activity and teleworking: the concept of registered office clarified

A definition retained, a method made explicit. The place where the undertaking's essential decisions are adopted and where its central administration functions are carried out is not a new criterion: it already appears in Article 14(5a) of Regulation No 987/2009. The reform therefore does not substitute a real seat for a statutory one. It does, however, specify that the relevant registered office is to be determined through an "overall assessment" based on all relevant factors in the light of the circumstances of the case, and it entrusts the Administrative Commission with laying down the detailed arrangements.

This clarification must be read within the scheme of Article 13 of the basic Regulation, which governs multi-State activity and is distinct from temporary posting under Article 12. The registered office is only one criterion among others: the employee's residence, whether a substantial part of the activity is pursued in the State of residence — assessed in particular by reference to working time and remuneration, with an indicative threshold of 25% — and the number and location of employers all shape the analysis. The registered office comes into play only where the conflict rule refers to it.

Lastly, the reform adds, in Article 14(10), a determination of the applicable legislation for a maximum period of twenty-four months, followed by a reassessment taking into account the situation foreseeable over the following twelve months. This is a review date, not a limit on the duration of multi-State activity.

Cross-border teleworking. Teleworking regularly performed from the State of residence, alternating with activity in the employer's State, generally constitutes multi-State activity. For an employee working for a single employer, the legislation of the State of the relevant registered office applies where teleworking accounts for less than 25% of the activity; above that, the legislation of the State of residence in principle prevails. Between 25% and less than 50%, however, the framework agreement concluded under Article 16 allows, between signatory States, continued coverage by the employer's State, upon request and not merely by virtue of the employer's consent. At 50% or more, the framework agreement ceases to apply, subject to an individual exception.

The clarification of the concept of registered office therefore replaces neither the examination of the activity pursued in the State of residence nor the derogation mechanism of the framework agreement. The analysis must start from the actual organisation of work; the registered office is merely its final step, where the applicable rule so requires.

III. Deferred application: time to be put to good use

The date of 28 September 2026 marks the adoption of the reform, not the start of application of the new obligations. The timetable must be assessed precisely (A) before its practical consequences are drawn (B).

A. A timetable to be read with precision

Publication and entry into force. As at 8 October 2026, the procedure file 2016/0397(COD) on the European Parliament's Legislative Observatory recorded the procedure as "completed, awaiting publication in the Official Journal". Under its Article 3, the amending Regulation will enter into force on the first day of the month following that publication.

Application deferred by twenty-four months. The new Article 91 of Regulation No 883/2004 and Article 97 of Regulation No 987/2009 defer until twenty-four months after entry into force – and not after 28 September 2026 – the application of most of the rules discussed above: the new Article 12, three months' prior affiliation or activity, successive postings, the relevant registered office and reassessment for multi-State activity, prior notification and A1 application, and the review procedure under Article 19a. The exception is the new Article 19(2) and (3), concerning the issue of the certificate, which apply from entry into force.

By way of illustration only, publication in October 2026 would mean entry into force on 1 November 2026 and application of the deferred rules on 1 November 2028. These dates remain conditional until publication has taken place.

Postings already under way. The new Article 87b(4) of the basic Regulation preserves the former version of Article 12 for workers posted before the deferred application date, including during the transitional period. This does not extend the maximum duration of the posting, does not preclude checks and concerns Article 12 alone: the timetable for the other provisions must be assessed separately.

B. Practical consequences for employers

Prudence dictates continuing to apply the current rules until the new provisions take effect, and refraining from relying in advance on exemptions not yet in force. The transitional period is nonetheless valuable for adapting internal procedures.

The first step will be to systematise the prior legal characterisation of each assignment – posting, business trip, multi-State activity or cross-border teleworking – on which the applicable legislation and the required formalities depend. For employees recruited with a view to being posted, evidence of prior affiliation to the sending State's scheme should be collected at the hiring stage.

The A1 application will then need to be built into the assignment preparation process, with filing before the activity begins, retention of the acknowledgement of receipt and follow-up of the certificate's issue. Reliance on the exemptions will, for its part, require rigorous traceability: counting days worked over thirty days, identifying construction activities, and keeping documents evidencing the actual purpose of business trips (programme, invitation, travel order). An internal "business trip" label will not suffice, and an exemption from social security formalities will leave the labour law posting declaration untouched.

Lastly, employees regularly working in several States, including from home, should be identified, and the twenty-four-month reassessment date built into HR monitoring. More broadly, it is the undertaking's ability to demonstrate the reality of affiliation and activity conditions, beyond merely holding an A1 certificate, that will henceforth lie at the heart of inspections.

Conclusion

Behind its technical appearance, the reform reflects a change of philosophy. The largely declaratory and indicative regime that has prevailed until now gives way to a regime of foresight and proof: employers will henceforth have to anticipate the formality, document the exemption and be able to demonstrate, at any time, the reality of the situation they declare. The judgment of 9 June 2026 offers a foretaste, recalling that the force of an A1 certificate is only as strong as the review to which it may be subjected. The twenty-four-month period now opening should therefore be seen not as a respite, but as the time needed to adapt mobility policies. The Majorelle Mobility team is at the disposal of businesses to audit their practices, secure their procedures and support them in implementing these new rules.

Sources and references

- / [Text PE-CONS 29/26 amending Regulations \(EC\) No 883/2004 and No 987/2009](#)
- / [Regulation \(EC\) No 987/2009](#)
- / [Decision A2 of 12 June 2009 of the Administrative Commission, OJ C 106, 24 April 2010](#)
- / [Procedure file 2016/0397\(COD\), European Parliament Legislative Observatory](#)
- / [Council press release, 28 September 2026](#)
- / [Council press release, 23 June 2026, on the digital declaration for posted workers](#)
- / [Directive 2014/67/EU; proposal COM\(2024\) 531 final; proposal COM\(2026\) 980 final](#)
- / [CJEU, 6 February 2018, Altun, C-359/16](#)
- / [Cass. crim., 9 June 2026, No 24-85.090](#)
- / [Cleiss, cross-border teleworking \(in French\)](#)

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