**Provisions for issuing the A1 certificate to workers posted in another EU Member State (also applicable to the EEA and Switzerland)**

**1. The worker has social security insurance in Latvia.**

Before the posting, the worker must have had social security insurance in Latvia for at least 1 month and must have mandatory social security contributions paid for them.

**2. Work in another Member State must be performed for the undertaking/employer posting the worker, and there must be a direct link between them.**

There must be a direct employment relationship between the undertaking posting the worker

and the posted worker for the entire period of posting. A direct link means that the worker is subordinated to the management of the undertaking posting them. The following factors are taken into account in order to establish whether there is a direct link:

 responsibility for recruiting the worker;

 responsibility for concluding the employment contract;

 responsibility for determining work duties;

 responsibility for remuneration (without restricting possible agreements on workers’ remuneration between the posting undertaking and the undertaking in the country of employment;

 responsibility for dismissing the worker.

If the worker continues to work for the undertaking posting them, a direct link between them continues also if the worker works for one or several other undertakings during their short-term employment in another EU Member State.

**3. The worker performs short-term work in another EU Member State.**

The expected duration of posting may not exceed 24 months. The worker may not be posted to replace another posted worker. If a longer posting period is required, the worker or the employer may request an exception pursuant to Article 16 of Regulation (EC) No 883/2004, if this is in the interests of the worker.

**4. The undertaking/employer posting the worker must conduct a significant proportion of its business operations in Latvia.**

In the EU Member State where the undertaking has its business operations, it must generally pursue substantial activities that are not limited to internal management, taking into account all the criteria that characterise the undertaking’s activities. The respective criteria must correspond to the specific characteristics of each employer and the true nature of its operations. An undertaking is deemed to operate in a specific EU Member State if it pursues genuine activities that constitute a substantial proportion of its operations. The undertaking must also conduct operations in Latvia rather than only in the EU Member State where the worker is posted. The provisions of Article 12(1) of Regulation (EC) No 883/2004 cannot be applied to an undertaking posting a worker if it only employs administrative workers.

The following criteria determine whether the undertaking conducts significant operations in Latvia:

 the location of the registered office and administration;

 the number of employees at the Latvian undertaking and at the undertaking in another EU Member State;

 the place where posted workers are recruited;

 the place where most of the contracts with clients are concluded;

 the legislation applicable to the contracts that the Latvian undertaking has concluded with clients and employees;

 the number of contracts executed in Latvia and in another country;

 the turnover of the undertaking in Latvia and in another EU Member State over the previous 12 months (25% of the total turnover in Latvia is a sufficient criterion);

 the duration of the undertaking’s operations in Latvia since its establishment, etc.

**Information for the employer and the worker**

**Responsibilities of the employer and the worker**

A worker posted in another EU Member State and their employer must notify the VSAA of any changes during the posting period if:

 the worker’s posting in another EU Member State is cancelled;

 operations in the country of employment are ceased for any reason, with the exception of a short-term suspension of operations;

 the employer transfers the posted worker to another undertaking in Latvia;

 there are circumstances that may trigger the application of the legislation of another EU Member State.

The employer posting a worker in another EU or EEA Member State or in Switzerland in connection with the provision of international services, irrespective of the legislation applicable to the employment contract and the employment relationship, must ensure that the terms of employment and the working conditions of the posted worker are in line with the legislation of the country of employment and collective agreements that are deemed universally binding and regulate:

 maximum working hours and minimum rest periods;

 minimum annual paid leave;

 minimum wage and additional overtime pay;

 the terms of recruitment, especially via recruitment agencies;

 the protection of health, safety and hygiene at work;

 safety measures for people under 18 and women who are pregnant or

have recently given birth, and the work and employment terms for these persons;

 equal treatment of men and women and prohibition of other forms

of discrimination.

These terms do not apply to crews of merchant fleet undertakings.

**Rights of competent authorities in EU Member States**

The A1 certificate will not be issued, or will be revoked, if:

 the undertaking to which the worker is posted transfers the worker to another undertaking in the same EU Member State;

 the undertaking to which the worker is posted transfers the worker to another undertaking in another EU Member State;

 the worker is employed in an EU Member State in order for an undertaking in another EU Member State to post the worker to an undertaking in a third EU Member State.

The competent authorities in EU Member States, including the VSAA, evaluate and monitor the situations covered under Article 12 of Regulation (EC) No 883/2004, apply the criteria, and assess whether:

 the employer conducts operations in the respective EU Member State;

 there is a direct link between the employer and the worker.

In order to verify the above criteria, the VSAA can request employers to provide contracts for the sale of goods/services, financial statements, employment contracts and other documents proving that the employer conducts substantial business operations in Latvia and that there is a direct link between the employer and the worker.

The competent authorities of EU Member States can carry out checks throughout the entire period of the worker’s posting in order to verify that:

 the period of posting has not expired;

 mandatory social security contributions have been paid;

 the direct link between the employer and the worker is maintained.

**Procedure for submitting documents to request the A1 certificate when posting workers[[1]](#footnote-1)**

**The following documents must be submitted to the VSAA when requesting the A1 certificate for the first time for workers posted in another Member State:**

1. correctly competed **application form** D11722 (*Iesniegums sociāli apdrošināmās personas statusa saglabāšanai Latvijā, strādājot citā ES valstī pēc nosūtījuma* (‘Application for retaining the status of a person insured for social security purposes when posted to another EU Member State’);

2. copies of **the undertaking’s contracts** (for the sale of goods/services) proving substantial business operations in Latvia. These may be submitted at the employer’s discretion. Copies of the undertaking’s contracts do not need to be provided if several different D11722 applications are submitted in the same year. If a D11722 application was last submitted to the VSAA more than 1 year ago, the above documents must be enclosed with it. Is advisable that the applications be submitted at least 4 weeks before commencing work in another country. If the expedited issue of the A1 certificate is required, this must be stated in the application.

**!** Please be reminded that all boxes in form D11722 must be completed, and the information provided must be true and correct. Partially completed applications make it impossible to evaluated all the circumstances, and may delay the decision on the issue of the A1 certificate until the missing information is received. Likewise, if complete information is not available to the VSAA for the assessment of Latvian part of the undertaking’s operations, the decision on the issue of the A1 certificate may be delayed until the required information

is received. Employers submitting applications for several workers must enclose a covering letter stating the full names the posted workers, their identity numbers and the period of posting.

Applications may be submitted at any regional office of the VSAA. If the decision is positive, the VSAA will issues the A1 certificate, which can be collected by the worker in person at the VSAA client centre specified in the application or sent to the indicated postal address in Latvia.

Employers receiving A1 certificates for their workers in person at a VSAA office must produce authorisation to do so from the workers in question.

If you need additional information about posting workers and determining regulations applicable to such persons, contact us by email at iemaksas@vsaa.lv. Information can also be found on the VSAA website: <http://www.vsaa.lv>



VSAA izmanto Eiropas Darba iestādes atbalstu

tulkojumu nodrošināšanā

1. Article 12(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council [↑](#footnote-ref-1)