

Unofficial English translation of the

Aanbeveling van het Benelux Comité van Ministers betreffende de ontwikkeling van een multilaterale samenwerking in de strijd tegen grensoverschrijdende sociale fraude op Benelux- en Europees niveau

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Recommandation du Comité de Ministres Benelux relative au développement d'une coopération multilatérale dans la lutte contre la fraude sociale transfrontalière au niveau du Benelux et de l'Union européenne

RECOMMENDATION of the Benelux Committee of Ministers on the development of a multilateral cooperation in the fight against cross-border social fraud on the Benelux and European level – M (2015) 7

The Benelux Committee of Ministers,

Having regard to Article 6 (2) (g) of the Treaty establishing the Benelux Union, in conjunction with the objectives and priorities of the Benelux Union as provided for in Article 2 and Article 3 (2) (c) of said Treaty,

Whereas social fraud is a growing social problem, increasingly shows an organised nature and increasingly misuses borders between countries, regions, institutions and supervisory bodies, and this in order to avoid detection, supervision and prosecution,

Whereas social fraud consequently leads to unfair competition between Member States and their enterprises, and, moreover, gives rise to social dumping and an unacceptable deterioration of social rights and the solidarity which those rights are based on,

Whereas national inspection services experience territorial limitations in the enforcement of national control mechanisms with regard to natural and legal persons from other Member States and are confronted with international and interinstitutional borders,

Whereas an efficient and firm approach towards these forms of fraud is not possible without an efficient multilateral cooperation and a fast and positive exchange of both strategic and operational information between the member states involved,

Whereas this cooperation must therefore be international, interinstitutional and multidisciplinary,

Whereas a legal framework is required which makes far-reaching cross-border cooperation possible between the several inspection services with a view to the fight against social fraud,

Whereas the development of a legal framework concerning cooperation and exchange of information with regard to the fight against social fraud needs to be based on the basic principles of mutual trust, on the principle of legality, on the security of the exchange of information and on the principle of reciprocity, and whereas, in addition, the principle of finality, of proportionality and of subsidiarity must be respected,

Whereas the cooperation and exchange of information pursuant to Regulation (EC) No. 883/2004 on the coordination of social security systems, Regulation (EC) No. 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, Directive 96/71/EC concerning the posting of workers in the framework of the provision of service, and Directive 2014/67/EU on the enforcement of the former Directive, should be taken into account,

Whereas several declarations and instruments relevant to the fight against social fraud have been adopted within the Benelux, in particular the recommendation of the Benelux Interparliamentary Consultative Council as a result of the Trilateral Conference on 'fiscal and social fraud' of 20 April 2012 in The Hague and the reply to this recommendation by the Committee of Ministers, the joint declaration of the Benelux summit 'Social Dumping' of 13 February 2014, as well as the Benelux Treaty of 3 October 2014 concerning cross-border cooperation on road transport inspections and the accompanying transitional regulations of 16 December 2014, and the joint declaration "A Benelux Action Plan for jobs and growth" of 29 April 2015 as a result of the Benelux summit of the heads of government,

Whereas the governments of the three Benelux countries wish to devote themselves to fighting social dumping on a Benelux and European level,

recommends:

Article 1. Definitions

For the purposes of this recommendation:

- a) Benelux consultations on social legislation and the fight against fraud shall mean: consultations between the three Benelux countries in the context of the Strategic Consultations Social Legislation and Fight against Fraud (*SOC-STRAT*), the working group Bogus Schemes/Social Dumping (*SOC-SSOF*), the working group Fraudulent Temporary Work Agencies (*SOC-AIFU*) and the working group Benefit Fraud (*SOC-UFA*), established in accordance with Article 12 (b) of the Treaty establishing the Benelux Union;
- b) Posting Directive shall mean: Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services;
- c) Enforcement Directive shall mean: Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation');
- d) Coordination Regulation shall mean: Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;
- e) Implementing Regulation shall mean: 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;
- f) Posting shall mean: posting as provided for in the Coordination Regulation, or the concept "posting of workers" in accordance with the Posting Directive;

- g) A1 form shall mean: a document provided in accordance with Article 19 (2) of the Implementing Regulation in support of the application of the legislation applicable based on a provision of Title II of the Coordination Regulation;
- h) Electronic registration: a scheme regulating the prior electronic notification when a person is posted on the territory of a Member State.

Article 2. Objectives

The governments of the Benelux countries take joint initiatives so that the Benelux Union may be a pioneer within the European Union:

- a) by dealing with unfair competition and social dumping by means of improved cooperation and data exchange, and such on an international level;
- b) by taking measures wherever necessary in order to find an answer to certain loopholes in the regulatory framework or to cooperation problems;
- c) by looking for support, within the Benelux and together with other countries, to take the appropriate measures at European level for the purpose of the provisions of a) above.

Article 3. Measures at Benelux level

1. To achieve what is laid down in Article 2 above, the governments of the Benelux countries take, among others, the following measures:
 - a) The Benelux consultations on social legislation and the fight against fraud are fully supported, including by means of scientific cooperation, in order to further clarify and investigate certain types and aspects of social fraud, in particular concerning the fight against bogus schemes, benefit fraud and fraudulent temporary work agencies;
 - b) The different forms of cross-border social fraud are better detected, based on multidisciplinary cooperation and exchange of data by means of the cross-border use of databases, whereby it is specifically examined whether a system of indicators and red flags on Benelux level is advisable and feasible to detect forms of social fraud;
 - c) The measures provided for in the Enforcement Directive are implemented in a similar way and are strengthened, where appropriate by, amongst others, better connecting electronic notifications on a Benelux level, based on existing national regulations;
 - d) In the framework of the Benelux Union, it is examined:

- i. in what way cooperation can be optimised in determining the applicable social security legislation, and
 - ii. in what way the authorities involved may be giving responsibility in the context of the collection of social security contributions in order to detect and curb social fraud;
 - e) Joint inspections are organised between the inspection services of the Benelux countries with a view to efficiently fighting social dumping;
 - f) The effective enforcement of sanctions imposed in a Benelux country is guaranteed for the purpose of curbing social fraud;
 - g) The aim is cooperation and the accomplishment of political support from other Member States of the European Union, and in particular the neighbouring countries of the Benelux, the Baltic countries and the Nordic countries, to jointly urge the European Union to introduce European measures in the fight against social dumping.
2. By agreement, the governments of the Benelux countries determine an appropriate legal framework to lay down the basic principles applicable to the measures as provided for in (1).

Article 4. Measures at a European level

The governments of the Benelux countries ask the European Commission:

- a) To revise the Coordination Regulation and the Implementing Regulation, as well as the related implementing rules, in particular so that:
 - i. the regular duration of two years, with regard to posting as provided for in the Coordination Regulation, is actually complied with, and so that it is examined in what way the terms of the Coordination Regulation and the Posting Directive can be geared to each other better and possibly re-assessed,
 - ii. the procedure for disputes concerning A1 forms as provided for in Article 5 of the Implementing Regulation is amended, in order to improve its effectiveness, speed and reliability,
 - iii. it is examined in what way the rules on applicable social security legislation can be amended in order to prevent possible situations of fraud, amongst others with regard to Articles 5 and 6 of the Implementing Regulation concerning, respectively, the value of A1 forms and the provisional application of a social security legislation,
 - iv. it is examined which options exist to fight cross-border abuse of letterbox companies and of the applicable social security scheme;
- b) to stimulate a better coordination of electronic notifications within the European Union, in order to detect and fight cross-border social fraud, by analogy with the

methods that are applied to this end within the Benelux, and possibly to work towards at joint systems;

- c) To enhance the cross-border exchange of data with a view to detecting and fighting cross-border social fraud, in particular based on the implementation of the planned IT system EESSI (Electronic Exchange of Social Security Information) for electronic data exchange and authentication in accordance with the Coordination Regulation and the Implementing Regulation;
- d) To create the possibility for the inspection services of two or more Member States to perform and reinforce joint inspections in cases of cross-border social fraud;
- e) to consider the question in what way the authorities involved may be given responsibility in the context of the collection of social security contributions in order to detect and curb social fraud.

Article 5. Entry into force

This recommendation shall enter into force on the date it is signed.

Done at Brussels, on 23 September 2015.

The president of the Committee of Ministers,

B. TOMMELEIN