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(Information)

COUNCIL

RESOLUTION OF THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL

of 22 April 1999

on a Code of Conduct for improved cooperation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers

(1999/C 125/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

1. CONSIDERING that cooperation between the Member States concerning transnational employment issues should be improved, in order to avoid negative consequences for the protection of workers and for the functioning of the labour market,
 - the combating of transnational social security benefit and contribution fraud (hereinafter referred to as 'social security fraud'),
 - the combating of undeclared work, and
 - the transnational hiring-out of workers,
2. RECOGNISING that an improved cooperation and exchange of information will have positive effects on the employment situation and the protection of workers, in particular in the following areas:
 - the combating of transnational social security benefit and contribution fraud (hereinafter referred to as 'social security fraud'),
 - the combating of undeclared work, and
 - the transnational hiring-out of workers,
3. RECALLING that in its Communication on undeclared work the Commission called for coordinated action at European Union level to combat undeclared work,
4. RECOGNISING that, as a first step, it is desirable that the emphasis be placed on ensuring better cooperation between Member States in combating social security fraud, in combating undeclared work and in the field of the transnational hiring-out of workers,
5. RECALLING that some provision is made for cooperation between authorities in respect of social security benefits and contributions in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, self-employed persons and to members of their families moving within the Community ⁽¹⁾, including relevant decisions and recommendations by the Administrative Commission on Social Security for migrant workers, and in respect of transnational posting of workers by 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 ⁽²⁾,
6. CONSIDERING also that existing structures and procedures offer a means for transnational cooperation and in particular in the context of Article 4 of Directive 96/71/EC,
7. CONSIDERING that in areas which fall outside these provisions it is desirable to encourage improved bilateral cooperation and exchange of information between Member States in the areas covered by this Resolution by means of a non-binding Code of Conduct, using existing structures and procedures,
8. CONSIDERING the importance of the social security services and, where they exist and have the relevant competence, of the labour inspection services of the Member States for the implementation of this Code of Conduct,
9. RECALLING that in its ruling of 17 December 1981 (Case 279/80, WEBB) the Court of Justice of the European Communities held that Article 59 of the Treaty establishing the European Community does not preclude a Member State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another Member State and pursuing

⁽¹⁾ OJ L 149, 5.7.1971, p. 2. Regulation as last amended by Regulation (EC) No 307/1999 (OJ L 38, 12.2.1999, p. 1).

⁽²⁾ OJ L 18, 21.1.1997, p. 1.

activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the State in which he is established, provided, however, that in the first place when considering applications for licences and in granting them, the Member State in which the service is provided makes no distinction based on the nationality of the provider of the services or his place of establishment, and, in the second place, that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established,

10. RECOGNISING the importance of protecting the fundamental right to privacy with respect to the processing of personal data, as guaranteed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾, and by Article 84(5) of Regulation (EEC) No 1408/71,

11. RECALLING that this Code of Conduct represents a political commitment and therefore does not affect the rights, obligations and responsibilities of the Member States and of the European Community, including existing bilateral and multilateral arrangements on cooperation between the authorities or bodies of the Member States,

HEREBY ADOPT THIS RESOLUTION:

THE MEMBER STATES are invited to observe, in accordance with national law and practice, the following Code of Conduct for improved cooperation between authorities of the Member States concerning the combating of transnational social security benefit and contribution fraud and undeclared work, and concerning the transnational hiring-out of workers:

A. OBJECTIVE AND SCOPE OF THE CODE OF CONDUCT

1. The objective of this Code of Conduct is, in cases where at least two Member States are involved, to improve cooperation between the competent authorities and institutions ('bodies') of the Member States in combating social security fraud, in combating undeclared work, and in the field of transnational hiring-out of workers.

2. For the purpose of this Code of Conduct:

- (a) 'social security fraud' shall mean any act or omission to act, in order to obtain or receive social security benefit or to avoid obligations to pay social security contributions, contrary to the law of a Member State;

- (b) 'undeclared work' shall mean any paid activities that are lawful as regards their nature, but not declared in conformity with national law and practice. In any case, this definition must not be more restrictive than the legislation in force in each Member State;

- (c) 'transnational hiring-out of workers' shall mean the hiring-out of workers by an employer in a Member State for the purpose of providing services to a user in another Member State with continuation of the employment relationship between the workers and the employer; this Code of Conduct shall not be understood as allowing the hiring-out of workers in Member States where this is not permitted by national law.

B. SPECIFIC ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION AND ASSISTANCE

1. Member States are invited to take the following steps and adopt the following procedures, in accordance with national law and practice, to improve cooperation between the competent bodies in combating social security fraud and undeclared work, and in verifying whether the requirements and conditions for transnational hiring-out of workers are fulfilled:

- (a) direct communication between competent bodies in the framework of cooperation;

- (b) the designation of national liaison offices in the Member States in order to facilitate cooperation, and their notification to the other Member States and to the Commission; no new structures need to be set up for this purpose;

- (c) the forwarding of any request for cooperation to the competent body of a Member State; the requesting body of the other Member State shall be informed thereof;

- (d) the reciprocal provision of administrative assistance between the competent bodies of the Member States, in particular in the form of the supply of information and transmission of documents.

2. In respect of data transmission, the Member States are invited to encourage cooperation between their competent bodies, consisting in particular in replying to reasoned requests from bodies in other Member States for information on social security benefits and contributions, presumed undeclared work, and transnational hiring-out of workers.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

In all cases of data transmission, the Member States involved shall apply all relevant national and Community laws and legislation providing for the protection of the right to privacy with respect to the processing of personal data.

3. In respect of verification of certificates, when the matter is open to doubt, Member States, in accordance with national law and practice, are encouraged to provide mutual administrative assistance to each other in the verification of the authenticity of certificates relating to circumstances which are relevant to areas covered by this Code of Conduct.

4. In respect of the transmission of documents:

(a) documents relating to cases of social security fraud, undeclared work and transnational hiring-out of workers may be transmitted by mail;

(b) the body which has transmitted a document by mail is invited to communicate to the requesting body a certificate of transmission or an acknowledgement of receipt personally signed by the addressee and indicating the place and date of receipt.

C. FOLLOW-UP OF THE RESOLUTION

Member States are invited to keep the Commission informed on measures taken in implementing this Resolution.
