

## CLIENT ALERT

### Posting of Workers – EU Court of Justice Recalls that EU Law Prevails on Member States Regulations Aiming to Combat Social Fraud

Jul.23.2018

If an employer from one European Union (EU) Member State temporarily posts one of its employees to another EU Member State, the A1 (former E101) certificate confirms that the worker remains subject to the social security scheme of the home country.

Belgian legislation provides that, where the social security authorities or courts establish abuse related to the determination of the correct social security scheme, the Belgian social security scheme will apply to the concerned employee (or self-employed person) if this Belgian scheme would have applied in accordance with the law.

The EU Court of Justice has now ruled that these provisions are in violation with EU law. Indeed, the EU Regulation 987/2009 obliges Member States to follow a specific dialogue and reconciliation procedure in case of doubt about the validity of a document, the supporting evidence, or the accuracy of the facts on which the particulars contained therein are based. If no agreement can be reached in the context of reconciliation, the matter is brought before an Administrative Commission of the EU.

Belgium argued that the prohibition of abuse of rights as general principles of law allows Member States to adopt national provisions that deviate from secondary EU legislation, but this argument failed.

This EU Court decision is not only relevant for Belgium. It should be seen as a clear warning to all EU Member States that national initiatives and regulations aiming to protect their labor market against social fraud need to be aligned with and not contradict EU Regulation 987/2009, and more particularly the dialogue and reconciliation procedure as provided in this Regulation.

Our Brussels Labor & Employment practice is available to advise and assist companies regarding all aspects of international employment and posting of workers.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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