

Newsflash

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Employment, Social Security and Immigration Law

Management committee members maintain self-employed status

The board of directors of a limited company may delegate their leadership and representative role within a company to the management committee (MC)¹. Any physical or moral person- whether they are a director or not - may take part.

With regard to the social status of management committee members, up until recently, the NISSE (Belgian National Institute for the Social Security of the Self-employed) made a distinction between MC members – who are not directors – acting as representatives for the company and those only fulfilling a purely technical role². Consequently, only the authorised representatives were automatically granted self-employed status along with the obligation to affiliate to a social security fund.

Nevertheless, since September 2007, the NISSE considers that all MC members are irrefutably presumed to be self-employed³. This assumption is based on the very nature of the management committee: according to the NISSE, any MC member is by definition responsible for carrying out legal business on behalf of the company. Furthermore, the NISSE believes that a MC member working for a profitable business must be seen as an authorised representative and is therefore assumed to carry out a self-employed activity.

This understanding is disputable given the ongoing jurisprudence, which confirms that the mandate of a managing director can be executed as an employee. It is important to note that:

- These are the current beliefs of the NISSE without any specific legal foundation. Therefore this can be contested, at any moment, before a court of law or modified by the NISSE. This point of view does not, in any case, carry the same value as the legal presumption concerning the director or the manager.
- This presumption only stands for activities carried out as MC member (as authorised representative). Insofar as the MC member carries out other professional activities in addition to his/her MC mandate, the presumption will not apply to such activities and the principles of the law of 27 December 2006 on work relationships (assessment of the relationship of authority) will fully apply.

The point of view of the NISSE nevertheless offers an opportunity for executives to be granted self-employed status.

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¹ Article 524 bis of the Company Code

² whereby the irrefutable presumption of article 3 of the Royal Decree of 27 July 1967 was only applicable for the first of these scenarios.

³ the NISSE does not base these assumptions on article 3 of the Royal decree of 27 July 1967 but rather upon article 2 of the Royal Decree of 19 December 1967.

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