

# GMS Flash Alert

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## France – Court Confirms “Forfait Social” Due on Certain Directors’ Fees Paid by French Companies

The remuneration paid to members of boards of directors or supervisory boards, still often referred to as “attendance fees,” is subject to a rather atypical social and tax treatment in France.<sup>1</sup>

The Cour de Cassation, the highest court in France’s judicial system, recently decided that directors’ fees paid to members of the supervisory board of a French company are subject to a tax, called “forfait social,” irrespective of the tax residence status of the recipient of the fees or whether the recipient is covered by the French social security system.<sup>2</sup>

### WHY THIS MATTERS

European Union (EU) law in the field of social security coordination aims at eliminating or reducing obstacles to the free movement of persons between EU member states.<sup>3</sup>

In this long-awaited decision, judges held that directors’ fees, paid by a French company to a director covered by the Belgian social security regime, are subject to the forfait social.

French companies paying directors’ fees should review their compliance obligations and costs in light of the ruling, as they may be treating such remuneration differently than perhaps ought to be the case in light of this ruling.

### Forfait Social and Directors’ Fees

Fees received by board members who are not employed and not assimilated as employees within the meaning of France’s social security legislation, are not subject to social security contributions as income from activity. They are treated as investment income and attract a 20-percent flat-rate tax called “forfait social.”

The funds collected are allocated to certain social security programmes but do not provide any entitlement to social security benefits for the recipients of the income.

## Cour de Cassation Case

The Cour de Cassation sought to answer the following matter: if the forfait social is considered a social tax, then the question arises as to whether it is due when the recipient of the fees is not subject to France's social security system.

The Court held that the forfait social did apply to the fees paid to the member of the supervisory board of a French public limited company regardless of nationality and tax residence despite the fact that he was covered by the Belgian social security system. The Court refused to transfer the case to the Court of Justice of the European Union (CJEU) for a preliminary ruling on the grounds that it did not see any infringement to the principle of the "unicity" of the applicable social security legislation.

## KPMG AVOCATS INSIGHTS

On a first reading of the decision, one might think that this is the end of the matter. However, the description of the facts was not altogether clear, which suggests that the subject is not really closed. Although the CJEU has ruled on various cases of socially-earmarked taxes, there are no clear and reliable guidelines to draw the necessary conclusions as to whether they fall within the scope of EU Regulations on the coordination of social security within the EU.

In view of the decision, French companies paying directors' fees to individuals outside of France should seek advice regarding their compliance obligations. Advice should also be sought by non-French companies paying directors' fees to French residents (a situation not covered by this decision).

## FOOTNOTES:

1 For a brief discussion of the current tax treatment of board members' income, see section 2.6 of the "[Taxation of International Executives: France](#)," a publication of KPMG International.

2 [Cass. 2nd civ. 6-6-2024 n ° 21-23.396 F-B](#) (in French).

3 This is an overarching principle of EU legislation: so as to avoid conflict of laws (whether positive or negative), a person is subject to the social security law of one country only and this is determined by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004, on the coordination of social security systems.

\* \* \* \*

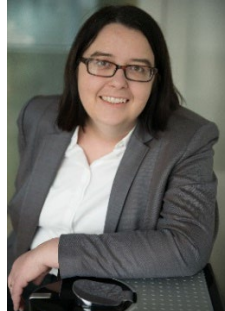
## Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with KPMG Avocats in France:



**Alain Loehr**  
**Partner**

Tel. +33 (0)1 55 68 48 32  
[alainloehr@kpmgavocats.fr](mailto:alainloehr@kpmgavocats.fr)



**Ann Atchade**  
**Partner**

Tel. +33 (0)1 55 68 48 46  
[annatchade@kpmgavocats.fr](mailto:annatchade@kpmgavocats.fr)

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