



New social security measures for workers posted abroad

Legal Alert

September 2023

kpmgabogados.es
kpmg.es



New social security measures for workers posted abroad

22 July saw the publication in the Official State Gazette of [Ministry of Inclusion, Social Security and Migration Order ISM/835/2023 of 20 July 2023](#), regulating the scope of and conditions for treatment of workers employed by companies operating in Spain and posted abroad as registered with the Spanish social security system.

The new Order, set to enter into force on **1 November 2023**, overhauls the existing legislation on an area which, until now, was covered by the [Ministry of Employment and Social Security Order of 27 January 1982](#), which will thus be **repealed**.

The Order provides for four potential posted worker scenarios and describes how each of them fits in with the Spanish social security contribution regime.

What is a “posted worker”?

For the purposes of this Order, **posted worker** (“expatriate”) means a person **employed in Spain** by a **company operating in Spain**, which **sends the worker to another country to carry out paid work at its expense**.

Which “situations equivalent to registration with social security” are envisaged?

The Order introduces a number of scenarios in which expatriates will remain in a situation equivalent to registration with social security for the duration of their posting abroad.

These scenarios (article 3) vary depending on whether or not the country to which the expatriates are posted has in place an **international instrument on the coordination of social security systems** and the way in which such instrument is implemented.

The [situations equivalent to registration with social security](#) can be divided into two blocks:

- **Block I:** Posting to a country where no international instrument on the coordination of social security systems is applicable, or where an international instrument of this nature is applicable but the posted worker does not fall within its subjective scope.
- **Block II:** Posting to a country where an international instrument of this nature is applicable and provides for the temporary posting of employees, who may remain subject to Spanish legislation, albeit for a certain period of time, or to a country where such instrument is in place but does not provide for temporary posting.

Block I.- Countries in which no expatriate agreement applies

There are two scenarios in which an expatriate agreement will not apply in the country to which the employee is posted:

Scenario 1:

Posting to a country where **no** international instrument on the coordination of social security systems is in place.

Scenario 2:

Posting to a country where an international instrument on the coordination of social security systems is in place but only applies to nationals of each of the parties to such instrument and **does not, therefore, apply to the employee**.

In such cases (article 4 of the Order):

- ✓ Expatriates will be treated as registered with the social security scheme within which they were previously included, with the **right to certain benefits, subsidies and contributory pensions**.
 - As regards **benefits**: temporary incapacity (TI) benefit for occupational or non-occupational contingencies, birth and childcare, joint responsibility for infant care, risk during pregnancy, risk during natural breastfeeding and the care of minors with cancer or other serious illnesses.
 - As regards **pensions**: permanent disability (PD), death and survival due to occupational or non-occupational contingencies and contributory retirement pension.
- ✓ Both the company and the expatriates will be **required to continue contributing for as long as they remain in the host country and are employed by the company**.

- ✓ The company must notify the Social Security General Treasury (in Spanish, TGSS) of the posting of workers prior to commencement of the posting.

The Order provides for a **transitional regime** (sole transitional provision) for companies with expatriates who fall under scenario 2 at 1 November 2023. Such companies must report the posting to the TGSS within **six months of 1 November 2023**. The notification must be made under the same terms and with the same effects as those provided for applications for registration in articles 32, 35 and 38 of the [General Regulations regarding company and worker registration, and notice of new hires, terminations and variations of employee data for social security purposes](#).

Block II.- Countries in which an expatriate agreement applies

The Order provides for two scenarios in this case:

Scenario 3:

Posting to a country where an international instrument on the coordination of social security systems **is applicable, providing for the application of the social security legislation of the home country for the duration of such posting, after the maximum duration provided for therein have elapsed**, including any extensions that have been authorized (in the event that these extensions are contemplated in the respective international instrument).

Scenario 4:

Posting to a country where an international instrument on the coordination of social security systems **applies but does not provide for the posting of workers by their companies to the other country concerned**.

In such cases (article 5):

- ✓ Expatriates **may voluntarily remain subject to Spanish legislation** upon expiry of the maximum duration of the posting provided for in the international instrument, including extensions.
- ✓ The company, subject to the prior agreement of the expatriates concerned, may **file a request with the TGSS for them to remain subject to Spanish social security legislation and be treated as registered with the social security scheme** within which they were previously included, with the following **effects**:

Filing of the request	Commencement of the situation equivalent to registration
If filed prior to the expiry of the posting periods provided for in the respective international instrument, including any such extensions as may have been authorised, and up to the last day of the month following that date	From the day following expiry of the previous posting period.
If filed after the above period (i.e. after the expiry of the posting periods provided for in the respective international instrument, including any such extensions as may have been authorised, and up to the last day of the month following that date)	From the day on which the request is filed.

- ✓ **Protective action**, which is limited in scope, will include **contributory pensions** for permanent disability (PD), death and survival arising from non-occupational contingencies and the contributory retirement pension, the extent and scope of which will be as provided for in the regulations applicable to the social security scheme within which they were included (article 10.2).
- ✓ The sole transitional provision of the Order provides for a **transitional regime** for companies with expatriates who, on 1 November 2023, fall under scenario 3 or 4: such companies may, subject to agreement with the persons concerned, **request their voluntarily affiliation with Spanish social security**, pursuant to articles 7, 8 and 9, within a **period of six months of 1 November 2023**.

How are workers voluntarily affiliated with Spanish social security? (article 7)

In scenarios 3 and 4 (referred to in article 5), voluntary affiliation with the Spanish social security system is to be carried out in accordance with the following **rules**:

- ✓ Expatriates and companies must **formalise in writing, jointly** and using the **official form** - to be drawn up by the TGSS -, an **agreement for the application of Spanish social security legislation**, irrespective of any such social security legislation of the host country as may apply.

- ✓ **Companies** will, in any case, be **required** to:
 - provide the TGSS with the above agreement together with the request, using the official form, for the worker to remain registered with the social security scheme within which they were included. They must also provide the State Labour and Social Security Inspection Agency with this document at its request; and
 - keep the document for the entire duration of the posting for which they are voluntarily affiliated with the Spanish social security system and until the last day of the fourth calendar year following the end of the posting.
- ✓ A copy of the agreement will be made available to the worker.

What is the time limit for companies to provide the TGSS with information on the cases of equivalence to registration with social security?

Companies must provide information (article 8) on the various situations of equivalence to registration of their posted workers with social security, via electronic means, within **six months of the posting** or, as the case may be, of the **end of the maximum duration provided for in the international rules on remaining subject to the legislation of the home country**.

Some practical issues to be taken into account

It will be necessary to monitor how the above system is implemented and how this regime fits in with existing situations, bearing in mind that the sole additional provision of the Order notes that:

- **interpretation issues** will be resolved by the **Directorate-General for Social Security**; and
- the **TGSS** will be responsible for determining the **procedure to be followed** in order to recognise situations equivalent to registration -in respect of the scenarios provided for in the new Order-, and for **drawing up the forms** (including the form referred to in article 7) required in order to complete the relevant reporting and application formalities.

Contacts

Javier Hervás
Partner
KPMG Abogados
Tel. 91 456 59 33
jhervas@kpmg.es

Francisco Fernández
Partner
KPMG Abogados
Tel. 91 451 30 87
franciscofernandez@kpmg.es

Juan Ignacio Olmos
Director
KPMG Abogados
Tel. 93 253 29 00
jiolmos@kpmg.es

Beatriz Ruiz Vela
Senior Manager
KPMG Abogados
Tel. 91 451 32 17
beatrizruiz@kpmg.es

KPMG offices in Spain

A Coruña

Calle de la Fama, 1
15001 A Coruña
Tel.: 981 21 82 41
Fax: 981 20 02 03

Alicante

Edificio Oficentro
Avda. Maisonnave, 19
03003 Alicante
Tel.: 965 92 07 22
Fax: 965 22 75 00

Barcelona

Torre Realía
Plaça de Europa, 41
08908 L'Hospitalet de Llobregat
Barcelona
Tel.: 932 53 29 00
Fax: 932 80 49 16

Bilbao

Torre Iberdrola
Plaza Euskadi, 5
48009 Bilbao
Tel.: 944 79 73 00
Fax: 944 15 29 67

Girona

Edifici Sèquia
Sèquia, 11
17001 Girona
Tel.: 972 22 01 20
Fax: 972 22 22 45

Las Palmas de Gran Canaria

Edificio Saphir
C/Triana, 116 – 2º
35002 Las Palmas de Gran Canaria
Tel.: 928 33 23 04
Fax: 928 31 91 92

Madrid

Torre de Cristal
Paseo de la Castellana, 259 C
28046 Madrid
Tel.: 91 456 34 00
Fax: 91 456 59 39

Málaga

Marqués de Larios, 3
29005 Málaga
Tel.: 952 61 14 60
Fax: 952 30 53 42

Oviedo

Ventura Rodríguez, 2
33004 Oviedo
Tel.: 985 27 69 28
Fax: 985 27 49 54

Palma de Mallorca

Edificio Reina Constanza
Calle de Porto Pi, 8
07015 Palma de Mallorca
Tel.: 971 72 16 01
Fax: 971 72 58 09

Pamplona

Edificio Iruña Park
Arcadio M. Larraona, 1
31008 Pamplona
Tel.: 948 17 14 08
Fax: 948 17 35 31

San Sebastián

Avenida de la Libertad, 17-19
20004 San Sebastián
Tel.: 943 42 22 50
Fax: 943 42 42 62

Seville

Avda. de la Palmera, 28
41012 Sevilla
Tel.: 954 93 46 46
Fax: 954 64 70 78

Valencia

Edificio Mapfre
Paseo de la Alameda, 35, planta 2
46023 Valencia
Tel.: 963 53 40 92
Fax: 963 51 27 29

Vigo

Arenal, 18
36201 Vigo
Tel.: 986 22 85 05
Fax: 986 43 85 65

Zaragoza

Centro Empresarial de Aragón
Avda. Gómez Laguna, 25
50009 Zaragoza
Tel.: 976 45 81 33
Fax: 976 75 48 96

[Privacy](#) | [Unsubscribe](#) | [Contact](#)

© 2023 KPMG Abogados S.L.P., a professional limited liability Spanish company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

KPMG and the KPMG logo are registered trademarks of KPMG International Limited, a private English company limited by guarantee.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.