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**European Union – New  
Social Security Practical  
Guidance Issued**

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## *flash* International Executive Alert

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On 13 January 2014, the European Commission published a practical guide<sup>1</sup> on the 'Habitual Residence Test' to help European Union (EU) member states<sup>2</sup> apply EU rules on the coordination of social security.

### **Why This Matters**

This guidance brings useful clarity for employers with assignees and mobile employees connected to countries party to the provisions of the EU rules on the coordination of social security.

### **Background**

The EU rules<sup>3</sup> on the coordination of social security contributions and benefits contain specific provisions which determine which country's social security legislation is applicable in the case of posted workers and those working in two or more EU and European Economic Area (EEA) countries (including Switzerland). For the latter category, ascertaining a person's country of 'habitual residence' is an important part of this determination.

### **What This Means for Employers and Cross-Border Employees**

For those working in two or more EU and EEA countries (including Switzerland) under one employment, if they perform a substantial part (broadly 25 percent of working time) of the employed activities in the country of habitual residence they will be socially insured there. Otherwise, the individual is subject to the legislation on compulsory coverage of the country where the employer's place of business is situated.

These provisions may be relevant to cross-border employees with informal working arrangements, or to employees on a formal overseas posting with duties in several host countries and/or back in the home country.

The new guidance confirms the criteria for determining habitual residence for the purposes of these Regulations (see footnote 3), stating that the criteria is non-exhaustive, there is no hierarchy between them, and that they must be supported by objective facts and circumstances, i.e., the mere declaration that a person considers or wants to have his or her residence in a specific place is not sufficient.

Key criteria include family, employment and housing situation, duration and continuity of presence, tax residence, reasons for the move, and intention as it appears from all of the circumstances.

The guidance is supported by practical examples including several relating to posted workers, one of which is accompanied by their family on assignment and one of which is unaccompanied. The accompanied posted worker moves his family from their home in France to the assignment location, Belgium, for the period of the two-year posting.

The guidance concludes that he has moved his center of interests, albeit temporarily, to Belgium and therefore his habitual residence has transferred to the assignment location in Belgium even though he intends to return to the family home in France at the end of the assignment. Providing he is substantially working in Belgium, he will be liable to the Belgian social security legislation rather than remaining compulsorily insured in the French social security system.

#### KPMG Note

This guidance on 'habitual residence' is welcome and should assist EU member states in reaching greater consistency when reviewing difficult cases. The examples for posted workers, while useful, could surprise some employers who may regard assignees as having a right to remain in the home country social security scheme even if they work in two or more member states.

Special care should be taken when dealing with assignees who do not solely work in the assignment location, particularly if their families have accompanied them on the assignment. In particular, where it is not possible to secure an agreement in the form of an A1 certificate for home country social security to continue, this could lead to an unexpected increase in social security costs and a more complex state benefits position than originally envisaged.

Employers may wish to review their processes, policies, and communications with assignees and cross-border workers to help ensure that they are in compliance with the EU social security rules.

#### Footnotes:

1 European Commission Press Release:

<http://ec.europa.eu/social/main.jsp?langId=en&catId=868&newsId=2021&furtherNews=yes> .

2 The EU rules on the coordination of social security (see footnote 3) apply to EU member states, as well as Iceland, Liechtenstein, Norway and Switzerland. For related coverage on the extent to which they apply to the EEA states and Switzerland see the following issues of *Flash International Executive Alert*: [2012-115](#) (20 June 2012); [2012-042](#) (17 February 2012); and [2011-022](#) (31 January 2011).

3 Regulation (EC) 883/2004 and the Implementing Regulation 987/2009.

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The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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