

GMS Flash Alert

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Germany - Due to Brexit, German Authorities Limit A-1 Certificates' Validity

The German Federal Ministry of Labor and Social Affairs has recommended that German insurance institutions not issue A1-certificates¹ for periods beyond 29 March 2019, in light of the U.K. having triggered article 50 of the Treaty on European Union, launching the start of two years of negotiations for the withdrawal of the U.K. from the European Union (EU).

WHY THIS MATTERS

This policy means that employees assigned to the U.K. from Germany or assigned from the U.K. to work in Germany could face uncertain status in terms of social security coverage if their assignment period extends past 29 March 2019. (There is a two-year period of "Brexit" negotiations – 29 March 2017 to 29 March 2019 – at the end of which the U.K. formally will separate from the EU.)

Although the terms of the negotiations for Brexit will not be known for some time, at this stage it seems clear that Regulations (EC) 883/2004 and 987/2009 will cease to apply for U.K.-Germany cross-border workers at the end of the Brexit negotiations. This could lead to the possibility of double social security taxation and an interruption in the accrual of benefits entitlement (known as "totalization") in the post-29 March 2019 period for such workers.

Background

The U.K. formally informed the European Council on 29 March 2017 of its request to leave the EU. The conclusion of a withdrawal agreement is now being negotiated (Article 50 (2) EU Treaty).² The withdrawal of the U.K. from the EU will take effect as soon as the withdrawal agreement – now being negotiated – enters into force. If a withdrawal agreement is not concluded – nor an agreement arrived at to extend the period of negotiations – the U.K. will leave the EU on 29 March 2019 (Article 50 (3) EU Treaty).

Limitation of A1-Certificates by German Insurance Institutions

From today's point of view, as noted above, the EU's social security coordination law (Regulations (EC) 883/2004 and 987/2009) will no longer be applicable to the U.K. from 29 March 2019. The regulations that will instead apply as of 30 March 2019, are to be negotiated.

The German Federal Ministry of Labor and Social Affairs recently recommended that German insurance institutions not issue A1-certificates for periods exceeding 29 March 2019.³

Example: Scenario 1

A company based in Germany would like to send an employee to the United Kingdom. The assignment begins on 1 June 2017 and is expected to end on 31 May 2019. The prerequisites of an assignment in the meaning of the European coordination law are met (Article 12 (1) Regulation (EC) No 883/2004).

Solution

The planned assignment period goes beyond 29 March 2019. The competent German insurance institution will confirm the existence of an assignment by issuing an A1-certificate for the period from 1 June 2017 to 29 March 2019. The legislation that will apply to the employee from 30 March 2019 is yet to be confirmed.

The recommendation of the German Federal Ministry of Labor and Social Affairs covers all matters in which an A1-certificate needs to be issued for a person working in the United Kingdom. The recommendation also applies to workers who are employed in Germany and the U.K. on a regular basis (multi-state workers). In such cases, the period of validity of an A1-certificate will also be restricted to no later than 29 March 2019. If employment is pursued in another member state of the EU, the European Economic Area (EEA), or Switzerland (hereinafter, "member state"), this restriction shall not apply to the part of the employment activities carried out there.

Example: Scenario 2

An employee who resides in France takes up employment for an employer located in Germany on 1 June 2017. This employment will normally be pursued in Luxembourg, the Netherlands, and the U.K. until 31 May 2019. As of 1 June 2019, the employee is expected to work exclusively at the German office for the benefit of the German employer. The application for the determination of the applicable legislation is to be submitted in France (Article 16 (1) of Regulation (EC) No 987/2009). The French institution concludes that the employee is entirely subject to the German legislation on social security (Article 13 (1) (b) of Regulation (EC) No 883/2004). The A1-certificate must be issued by the German health insurance fund (in the case of persons with private health insurance, it is the pension insurance institution that issues it).

Solution

The employee will receive an A1-certificate for the employment that is carried out in Luxembourg and the Netherlands covering the period 1 June 2017 to 31 May 2019. For the part of the employment pursued in the U.K., the German insurance institution shall limit the period of validity of the A1-certificate to the period from 1 June 2017 to 29 March 2019.

If the habitual place of residence of a multi-state worker is in the U.K., the competent British insurance institution must determine the applicable legislation. If these findings are such that the employee is to be insured in Germany, a special feature will apply. In this case, the period of validity of the A1-certificate shall be limited to no later than 29 March 2019, in relation to all the participating member states (and not only to the U.K.).

KPMG NOTE

At the present time, there is no reliable information on the social insurance framework or conditions applicable after 29 March 2019. In any case, the applicability of the "old" German-British Agreement on Social Security cannot be ruled out.

The KPMG International member firm in Germany will endeavor to advise on further developments and will aim to inform readers as soon as an agreed solution emerges from the negotiations in Brussels.

FOOTNOTES:

1 The A1 certificate is equal to a "Certificate of Coverage" and proves the applicability of the legal social security legislation in the home country of the assignees.

2 For related coverage, see the following issues of GMS *Flash Alert*: [2017-065](#) (11 April 2017) and [2017-059](#) (31 March 2017).

3 The KPMG International member firm in Germany learnt of this development by way of an internal letter from the German liaison agency which has not been officially published.

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional or one of the following professionals with the KPMG International member firm in Germany:



Frank Seidel
Tel. +49 (0) 30 2068-4585
FSeidel@kpmg.com



Matthias Henne
Tel. +49 (0) 211 475-7392
MHenne@kpmg.com

The information contained in this newsletter was submitted by the KPMG International member firm in Germany.

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