

# GMS Flash Alert

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## Belgium – New Position on the Applicable Social Security Regime

There is an important change in the position taken by the Belgian social security authorities with regard to the qualification of activities in a cross-border context. This change applies when Belgium is identified as the competent country on the basis of the social security coordination rules in EC Regulation 883/04, applicable to the member states of the European Economic Area and Switzerland.<sup>1</sup> Where the Belgian authorities previously did not “requalify” and kept the qualification of the activity given by the country where the activity was performed, they now apply Belgian legislation for the qualification of the foreign activity.

According to an internal interpretative note of the Belgian social security authorities<sup>2</sup>, Belgian authorities, once being appointed as competent country in accordance with the coordination rules in the EC Regulation 883/04, should re-evaluate a person’s social security status according to its own national legislation in order to determine the applicable Belgian social security regime. Previously, the Belgian authorities kept the qualification given by the country where the activity was performed.

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### WHY THIS MATTERS

This new approach may have an effect on the amount of Belgian social contributions and relating benefits for existing and future cases of internationally mobile employees. A case-by-case analysis is required in this respect.

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### Background

EC Regulation 883/04 on the coordination of social security provides for rules that concern individuals who normally work in two or more member states or Switzerland. These rules are designed to establish that for individuals the social security legislation of only one country will be applicable at a time.

When applying these coordination rules in order to determine the competent country, the qualification as given by the country where the activity is performed is respected.

Once the competent country is determined in accordance with EC Regulation 883/04, it is up to that country to determine to which (national) social security regime a person should be subjected. In the EU, the most common social security regimes are the regime for self-employed persons, the regime for employed persons, and the regime for public officers. Whether an individual falls under one or the other social security regime is determined by national legislation.

### Example: Company Directors

According to Belgian legislation, there is a legal presumption that company directors and business managers are regarded as self-employed persons and thus subject to the social security regime for self-employed workers. In other countries (e.g., United Kingdom, the Netherlands, Switzerland) company directors may be subject to the social security regime for employees.

When an individual is executing a corporate mandate at a Swiss company in Switzerland and is performing substantial activities as an employee in his home country Belgium, Belgian social security applies. The application of the new position can lead to a different outcome on the applicable Belgian social security regime.

In the past, the individual was subject to Belgium's social security regime for employees for his entire professional income. If Belgium, being the competent country, now applies Belgian legislation and requalifies the directorship in Switzerland as a self-employed activity, this will lead to the application of Belgian social security for self-employed workers on the income earned from the director's mandate in Switzerland.

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## KPMG NOTE

The Belgian social security authorities take the view that Belgium becomes competent to provide for a qualification on social security of an activity performed in part or entirely abroad. This might lead to discussions such as how Belgium will qualify the social security position of, for example, a taxi driver only performing taxi services in France and having another employee activity in Belgium.

Each country may have its own interpretation on this topic resulting potentially in conflicting qualifications. Eventually, should it come to this point, a judgement by the European Court of Justice could bring clarity on the correct and uniform interpretation. At least until then, a case-by-case approach is required.

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## FOOTNOTES:

1 Regulation (EU) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

2 Internal interpretative note of the Belgian social security authorities of 21 December 2017, *unpublished*.

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## Contact us

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



**Jeroen Vandenbossche**

Tel. + 32 2708 4288

[jvandenbossche@kpmg.com](mailto:jvandenbossche@kpmg.com)



**Sania Khan Bhatti**

Tel. + 32 2708 4245

[skhanbhatti@kpmg.com](mailto:skhanbhatti@kpmg.com)

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

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