



GMS Flash Alert

Immigration Edition

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Germany - Considerable Lengths Taken by Government to Stem Rise of COVID-19

Like other countries in Central Europe, Germany is implementing serious countermeasures to fight the SARS-CoV-2 Virus and the disease COVID-19 caused by it. As of 16 March 2020, 08:00 CET, a partial shutdown of the borders with Austria, Denmark, France, Luxembourg, and Switzerland is in effect with exemptions that at this stage are limited and not entirely clear. Due to the emergency situation, many local immigration offices have reduced their capacities significantly and social distancing has become a very important behavioral norm in everyday social life in Germany.

WHY THIS MATTERS

Germany now follows other countries like Austria, Italy, and France in limiting cross-border travels into and out of Germany with significant impact for the mobility of a company's international workforce.

The closing of Germany's borders from and other travel and entry-exit measures previously announced will impact companies with expatriate populations in terms of future assignments inbound to Germany or outbound from Germany. Employees and their families who may have received offers for an international assignment to Germany should postpone the commencement of the assignment. This could cause some anxiety, stress, and inconvenience, especially where plans for relocation are already underway.

Companies with global presence and individuals operating across borders need to be increasingly aware of the relevant risks associated with travel, large-crowd events and conferences, and new work arrangements consequent to the COVID-19 outbreak. Also, daily life is significantly impacted and social distancing to flatten the curve is something all residents are urged to observe.

Temporary Reinforcement of Internal Border Controls

On Sunday evening, 15 March 2020, Horst Seehofer, Germany's Minister of the Interior, for Building and Community held a press conference announcing the following measures:¹

- With effect as of 16 March 2020, Germany triggered its temporary internal border controls in respect of the following European Union (EU) member states, applying Art. 28 (1) of the EU Regulation No. 2016/399 (hereafter: Schengen Border Code)²: **Austria, Denmark, France, and Luxembourg.**
- Furthermore, the same applies **to Switzerland** as a Schengen member state (though not a member state of the EU). Art. 28 (1) Schengen Border Code allows this measure for up to 10 days to counteract against serious threats to (a) public policy or (b) internal security. Art. 28 (3) Schengen Border Code allows the extension of the temporary controls for a further 20-day period, while the maximum duration is two months.³

Limitation of Cross-Border Travel

During the press conference, Mr. Seehofer not only mentioned the temporary reinforcement of controls at the internal borders vis-à-vis the aforementioned countries; in addition, he made reference to the fact that entries from those countries into Germany shall be denied – with exemptions only for persons transporting goods to Germany and cross-border employees. It is currently not clear if this is only possible for residents of Germany's neighboring countries with a German employment contract ("cross-border employee") or those working in Germany as posted workers with an employment contract in the neighboring country.

Cross border travel shall only be allowed in the following cases:

- Germans returning to their home country.
- Foreigners transporting goods to Germany from those neighboring countries.
- Foreigners entering Germany temporarily as cross-border commuters for the purpose of employment in Germany.

Mr. Seehofer, however, indicated that foreigners with symptoms of COVID-19 will be reported to the local public health offices and a decision on how to proceed will be made upon this consultation. In a worst-case scenario, they might be denied entry for the purpose of protecting public health.

At this stage, only very generic information has been published in "FAQ" style.⁴ Furthermore, Mr. Seehofer mentioned during the press conference – which is available on YouTube⁵ – that non-EU/EEA nationals with a valid residence permission for Germany can return to Germany, similar to German nationals.

Finally, EU Commission President Ursula von der Leyen confirmed on 16 March 2020, a proposal to the member states with the aim to limit entries to EU member states at the EU's external borders for 30 days.⁶ Chancellor Angela Merkel announced on March 17, 2020 around 20:00 CET that this proposal would be pursued and will order an immediate shutdown of Germany's external borders (at harbors at the Northern and Eastern See as well as airports with non-EU-connections) with the following exemptions⁷:

- German nationals;
- EU/EEA nationals and Swiss nationals as well as individuals from the U.K. and their dependents (limited assumingly to the core family in the sense of the relevant EU framework – Art. 2 No. of Directive 2004/38/EC) for the purpose travelling to their home country;

- Non-EU/EEA nationals with a valid residence permission (Residence Permit, EU Blue Card, ICT-Card, Mobile-ICT-Card, Settlement Permit, EU Long-Term Residence Permit) or National D Visa for returning to the country of their current residence.

The entry of all other non-EU/EEA nationals shall be denied if they cannot prove an urgent reason for entering the territory of the member states. Such reasons can be linked to fighting COVID-19 as a researcher or medical staff, but also for personal reasons (death of a family member). More detailed announcements on this have not been made yet.

Impact on Administrative Procedures

Several German diplomatic missions like the Consulate Generals in New York City⁸ and Chicago⁹ are asking applicants already to refrain scheduling and attending visa appointment except for emergencies. Others, like the German diplomatic missions in Tokyo and Houston have cancelled booked appointments and informed, via email, the applicants about this.

More severe is the situation in Germany. Local immigration offices processing the issuance of long-term residence and work permissions (or extensions of visas under extraordinary circumstances) are part of the local municipalities ("Landkreise", "kreisfreie Staedte"). Therefore, they shall apply the guidelines of the Federal State, but still have some discretion. Specific guidelines for the operations of administration have not yet been published. On 17 March, Dr. Markus Soeder (Minister-President of Bavaria) mentioned during a press conference that 400 employees of other administrations would be seconded to the local public health administrations.¹⁰

Just as examples, the immigration office of Berlin ("Landesamt fuer Einwanderung") has shut down all services that are customer-facing. Furthermore, new applications will not be processed at the moment.¹¹ The same applies to the immigration office of Munich City ("Kreisverwaltungsreferat")¹² and Duesseldorf.¹³

From a legal perspective, filing of applications of long-term residence and work permission – or extension of them – do not require a personal visit or specific format. Therefore, the Munich immigration office and the Berlin immigration office already consider a request for service in any format from applicants as sufficient to create a specific legal effect.

This legal effect is known as "Fiktionswirkung," which is caused by filing an application for a long-term residence and work permission or extension. If this request is filed during the validity period of a visa or long-term residence and work permission, all effects from the visa or the long-term residence and work permission are extended by act of law until the final decision from the immigration office.¹⁴ This special effect does not apply to the extension of a Schengen Visa.¹⁵

Further Measures Impacting Social Life

In addition, multiple measures are taken by the governments of each Federal State ("Bundesland") in Germany, as they are responsible for measures aimed at fighting infectious disease and for protecting the public order and security. Therefore, the Federal Government ("Bundesregierung") agreed on guidelines with the Federal States, which they must implement now.¹⁶ As the guidelines are very detailed, only a broad summary can be given below:

- Closure of retail shops except, in particular, food stores, banks, petrol stations, pharmacies and medical supply stores.
- Closure of entertainment venues, for example, bars, clubs, concert halls, museums and similar institutions, trade fairs, exhibitions, cinemas, amusement and animal parks. Prohibition of get-togethers in clubs and other sports and leisure facilities, as well as closure of universities, schools, and kindergartens.
- Limitation to accommodation offers in Germany for necessary purposes and expressly not for tourist purposes.
- Implementation of regulations that restaurants and dining establishments are generally to be opened not earlier than 06:00 CET and closed not later than 18:00 CET.

KPMG NOTE

Germany is not fully shutting down the country's social life; but it is being limited to necessary social contacts in the light of social distancing. With regard to the international mobility of workforces, entry into Germany from Austria, Denmark, France, Luxembourg, and Switzerland is to be limited. Even if entries are permitted for the purposes of transporting goods and some cross-border work in Germany, transporters and cross-border employees, should factor in long lead-times at border control points.

Furthermore, there is a trend of more and more immigration offices in Germany being unable to serve applicants due to shutdowns.

Professionals with the KPMG International member firm in Germany can help with matters related to "Fiktionswirkung" by filing applications in writing and filing them with the responsible immigration office.

The KPMG International member firm in Germany is closely monitoring the developments on COVID-19 and will endeavour to report on any updates. This *Flash Alert* is based on the available information on 18 March 2020 (at: 09:45 CET).

FOOTNOTES:

- 1 See Summarised here (so far only available in German): <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/03/grenzschliessung-corona.html>.
- 2 See: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0399&from=DE#d1e1951-1-1>.
- 3 Art. 28 (5) Schengen Border Code.
- 4 See: <https://www.bmi.bund.de/SharedDocs/faqs/EN/topics/civil-protection/coronavirus/travel-restrictions-border-control/travel-restrictions-boarder-control-list.html> .
- 5 See the YouTube posting of the press conference in German: <https://www.youtube.com/watch?v=qIs-2s0gTTg> .
- 6 See: <https://www.n-tv.de/politik/Von-der-Leyen-kuendigt-Einreiseverbot-in-die-EU-an-article21646116.html> .
- 7 See the press release from the Federal Ministry of the Interior, for Building and Community (only available in German so far): <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/03/corona-reisebeschraenkungen.html> .
- 8 See: https://service2.diplo.de/rktermin/extern/choose_realmList.do?locationCode=newy&request_locale=en .
- 9 See: https://service2.diplo.de/rktermin/extern/choose_realmList.do?locationCode=chic&request_locale=en .
- 10 See (only available in German): <https://www.merkur.de/bayern/coronavirus-soeder-bayern-katastrophenfall-tote-massnahmen-schliessung-geschaefte-news-krankenhaus-zr-13599530.html> .
- 11 See: <https://www.berlin.de/einwanderung/ueber-uns/aktuelles/artikel.906001.php> .

FOOTNOTES (cont'd):

12 See (only available in German):

<https://www.muenchen.de/rathaus/Stadtverwaltung/Kreisverwaltungsreferat/Auslaenderwesen/Aktuelle-Meldung.html> .

13 See (only available in German): <https://www.duesseldorf.de/leben-in-duesseldorf/informationen-zum-coronavirus/dynamisch-auf-die-lage-reagieren.html> .

14 Sec. 81 (4) Sentence 1 AufenthG.

15 Sec. 81 (4) Sentence 2 AufenthG.

16 See (only available in German): <https://www.bundesregierung.de/breg-de/aktuelles/vereinbarung-zwischen-der-bundesregierung-und-den-regierungschefinnen-und-regierungschefs-der-bundeslaender-angesichts-der-corona-epidemie-in-deutschland-1730934> .

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