

GMS Flash Alert

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Belgium - Changed Work Patterns and Application of EU Social Security Regulations

Many governments across the European Economic Area (EEA) have instituted measures aimed at fighting the spread of COVID-19. And many businesses have responded to these measures by encouraging or mandating work-at-home and other work arrangements for their workers. Consequently, individuals' cross-border working patterns are undergoing change, resulting in their increased presence and work in their home countries, and reducing travel.

To prevent a change of the competent member state for social security coverage of international mobile workers, such as frontier workers¹ and multi-state workers, Belgium's federal government has taken the decision to disregard such temporary changes in an individual's cross-border working pattern during the COVID-19 outbreak.

WHY THIS MATTERS

EU Regulations include solutions to changed cross-border work scenarios. (For related coverage, see [GMS *Flash Alert* 2020-068](#), 18 March 2020².) However, employers and workers might feel uncomfortable about the immediate impact of their changed working pattern with respect to their social security obligations and (present and future) social security benefits in Belgium.

Therefore, Belgian authorities' decision to disregard the changes in the working pattern may alleviate the immediate concerns of international mobile workers during the COVID-19 pandemic, with respect to their social security coverage and rights to coverage in Belgium.

Context

The coordination of social security in the European Economic Area (EEA) and Switzerland is governed by Regulation (EC)

883/2004 on the coordination of social security systems³ and Regulation (EC) 987/2009 on the administration of Regulation (EC) 883/2004.

The stipulated “work state” principle as well as the exceptions thereto – these being posting and multi-state employment – continue to apply to the full extent during the COVID-19 crisis. The changes in working patterns of employed and self-employed persons must be assessed in light of Regulation (EC) 883/2004.

Background

The Regulations for coordination of social security continue to apply and are not irrelevant or invalid during the COVID-19 outbreak in Europe.

The Regulations include rules that determine which state will apply its national social security legislation to international mobile workers, such as cross-border commuters and multi-state workers. The default rule is that the social security legislation of the country where the work is performed will apply. However, an exception may be available to allow the worker to maintain coverage for social security in another member state. The most commonly-used exceptions apply to posted workers and to multi-state workers.

The provisions for multi-state workers stipulate, among other things, that if a worker’s employer is situated in one member state, the worker resides in another member state, and the worker performs less than 25 percent of his professional activities and/or earns less than 25 percent of his professional income in the country of residence (over a period of 12 months), then the worker is covered by social security in the country where the employer is situated. Consequently, if a worker temporarily and unexpectedly works from home for several weeks or months, this rule could result in the worker becoming covered by the social security in his country of residence (rather than the country where his employer is situated), even if he is working at home in accordance with his company’s policy, or governmental recommendations or mandatory orders.⁴

What Has Changed

The federal government of Belgium has adopted social distancing measures, including the strong promotion of working from home to prevent the spread of COVID-19.⁵ However, the EU Commission has not yet published any guidelines for the application of the coordination rules for social security that address the current circumstances.

Given that the increase of remote work may lead to changes in the country of applicable social security coverage, the Belgian government has decided that the period during which an international mobile worker is working from home on Belgian territory due to COVID-19 measures will not be taken into account for the determination of the applicable social security legislation. This measure may also relieve international mobile workers and their employers from having to complete additional administrative formalities in these challenging times, but in practice may require coordination with other EU governments.

Although the Regulations address such changed working patterns, the Belgian authorities appear to be responding to potential legal uncertainty that has suddenly arisen for employers and their international mobile workers. By taking this position, the authorities are recognising these the exceptional circumstances and are indicating their willingness to cooperate in terms of the continuity and adaptability of the applicable social security scheme.

Employers and workers who would like to formalise their social security situation when the COVID-19 pandemic has passed should consider contacting their tax and social security advisers to assess the situation, both retroactively and going forward. They may consider applying for an A1 certificate for a posted worker or for a ruling in the framework of article 16 of Regulation (EC) 883/04 to safeguard their social security benefits.

Belgian social security authorities confirmed their decision on 18 March 2020. This position is applicable as from 13 March 2020 (midnight), and for as long as the emergency measures taken by the Belgian government to limit the spread of COVID-19 are in force.

KPMG NOTE

This decision of the Belgian authorities is a unilateral decision and suggests flexibility in assessing the rapidly changing work patterns due to measures taken by governments and employers to help prevent the spread of the coronavirus and COVID-19.

Other member states of the EEA for whom the changing cross-border working patterns are a concern are likely in a position to consider (and agree) this approach, which could finally result in a common agreement based on article 16 of Regulation (EC) 883/04.

FOOTNOTES:

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

2 See GMS [Flash Alert 2020-068](#), 18 March 2020.

3 Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

4 Multi-state workers whose (sole) employer is located in their country of residence are not affected. They are in any case subject to the social security legislation of the country of residence.

5 Ministerial Decision containing the promulgation of the federal phase for the coordination and management of the crisis coronavirus COVID-19 of 13 March 2020 (*Arrêté ministériel portant le déclenchement de la phase fédérale concernant la coordination et la gestion de la crise coronavirus COVID-19*), and 23 March 2020 (*Arrêté ministériel portant des mesures d'urgence pour limiter la propagation du coronavirus COVID-19*), both to be found at www.eiustice.just.fgov.be).

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