KPMG

GMS Flash Alert

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Germany - Framework Agreements on Social Security with Austria, Czech Republic

Germany has agreed bilateral framework agreements with Austria and the Czech Republic which allow employees to perform up to 40 percent of their total working time physically in the country of residence without changing the applicable social security legislation.

WHY THIS MATTERS

As a result of the COVID-19 pandemic and the resulting restrictions on entry, the EU Commission has implemented a special regulation stating that a change in percentage of physically performed working time at one's overseas home (even up to 100 percent) will not impact the previous applicable social security legislation ("no-impact policy")[1]. This regulation is currently in effect until 30 June 2023.

The cross-border working world has changed due to the COVID-19 pandemic. Working from home has become very attractive for employees. The end of the no-impact policy can pose major challenges for employers, which has now been simplified regarding cross-border working between Germany and Austria as well as between Germany and the Czech Republic.

Background

For numerous employers located in Germany, engaging in cross-border activities, such as working from home in a different country, has been an appealing approach to motivate employees. However, it is necessary to fulfill specific requirements to help ensure that German social security legislation stays applicable while performing cross-border activities.

Due to the end of the no-impact policy,[2] the multi-state worker rules[3] will become fully applicable again as of 1 July 2023. Currently, no further exceptions have been announced. As a result, employees with an employer located in Germany and with a residence in Austria or the Czech Republic must perform regularly less than 25 percent of their work in the home country in order to stay subject only to German social security legislation.

The new bilateral framework agreements allow employees more flexibility regarding cross-border activities between Germany and Austria or Germany and the Czech Republic.

Details and Practical Implementation

Based on the EU Commission's guidance on telework of 13 May 2022,[4] Germany and Austria as well as Germany and the Czech Republic have created agreements with foresight for the period after the COVID-19 special regulation expires as of 1 July 2023. Both agreements state that teleworking of up to 40 percent in the home country should have no effect on the applicable social security law.

“Teleworking” is a work arrangement that enables employees to perform their job duties from a remote location, typically their home, utilising electronic communication technologies such as the internet, email, video conferencing, and other collaboration tools.

When the criteria for teleworking are fulfilled and between 25 percent and 40 percent of telework is performed in the home country, it is possible to file an application for a special arrangement (according to article 16 Regulation EC 883/2004), with the consent of the concerned employee.

The application must be submitted to the competent authority in the country where social security law should be applicable. The competent authorities in relation to the described agreements are the following:

Germany: Deutsche Verbindungsstelle Krankenversicherung – Ausland (DVKA)

Austria: Dachverband der Sozialversicherung

Czech Republic: Česká správa sociálního zabezpečení

A special arrangement allows employees in general to work for a limited period physically in another EU/EEA state or Switzerland (member state) without changing the applicable social security legislation. Germany, Austria, and the Czech Republic are now using the special arrangement to facilitate the legal social security modalities of cross-border activities for employees. The maximum permissible term of a special arrangement in this context is two years with the option of one (or more) extension(s).

The framework agreement between Germany and Austria[5] became active on 1 January 2023, and the framework agreement between Germany and Czech Republic[6] on 1 March 2023. As long as the no-impact policy is applicable (currently until 30 June 2023) this is “prior-ranking.” Therefore, the regulations of the framework agreements are valid as of 1 July 2023.

KPMG INSIGHTS

According to information available to KPMG in Germany, negotiations on bilateral agreements are currently also being conducted between Germany and other member states.[7] However, the priority is on a single overall agreement for all member states, though such an agreement is a lengthy process as it requires the approval of all states. Whether an overall agreement will be available on time, by 1 July 2023, is therefore questionable and cannot be confirmed by the German authority at this point in time. In any event, we recommend checking the applicable social security law for employees with cross-border activities between Germany and other member states as of 1 July 2023.

FOOTNOTES:

1 For more on the EU and the "no impact" policy, see *GMS Flash Alert* 2022-119, 17 June 2022.

2 For prior coverage of the end of the "no impact" policy, see *GMS Flash Alert* 2023-025, 31 January 2023.

3 Multi-State Worker rule according to article 13 Regulation (EC) 883/2004.

4 EUROPEAN COMMISSION, EMPL/1053-01/22 - EN AC 125/22REV3, Guidance Note on telework 13 May 2022, revised on: 7 June 2022, 14 June 2022, 14 November 2022.

5 See: Rahmenvereinbarung über die Anwendung von Artikel 16 Absatz 1 VO (EG) 883/04 bei gewöhnlicher grenzüberschreitender Telearbeit zwischen Deutschland und Österreich - GKV-Spitzenverband, DVKA .

6 See: Rahmenvereinbarung über die Anwendung von Artikel 16 Absatz 1 VO (EG) 883/04 bei gewöhnlicher grenzüberschreitender Telearbeit zwischen Deutschland und Tschechien - GKV-Spitzenverband, DVKA .

7 For related coverage of previous efforts with other countries, as an example see *GMS Flash Alert* 2022-169, 20 September 2022.

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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:

Daniel Schütz
Senior Manager
Tel. +49 (0) 211 475 6456
dschuetz@kpmg.com

Gunnar Bochmann
Assistant Manager
Tel. +49 (0) 211 475 7895
gbochmann@kpmg.com

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

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