GMS Flash Alert

2023-086 | April 21, 2023

European Union - New Framework Agreement for Social Security

The 27 member states of the European Union, Norway, Iceland, Liechtenstein, Switzerland, and the U.K. have been invited to sign a framework agreement for social security that will provide an opt-in to employers and employees to maintain social security coverage in the country of the employer when an employee works from home in another country less than 50 percent of the time.[1]

The Framework Agreement is to enter into force on 1 July 2023, for those countries who sign it by that time. If a country signs the Framework Agreement after 1 July 2023, the Agreement will have effect for that country from the time of signature and it will not apply retroactively.

WHY THIS MATTERS

Current rules in the EU regulations for social security[2] provide that an employee who resides in a different country from where their employer is located can work up to 25 percent of his time in the country of residence and remain covered by social security in the country of his employer (see *GMS Flash Alert* 2022-119, 17 June 2022). This has been the norm and makes the application of social security rules in this age of remote work and telework a serious challenge for employers, employees, and the social security authorities.

The Framework Agreement provides an option to employers and employees whereby an employee can work up to 49.9 percent of his time in the country of residence and maintain coverage under the social security system in the country of the employer. This introduces greater predictability and flexibility. If employers and employees want to use the option provided in the Framework Agreement, they must apply for the A1 certificate.

With limited exceptions, retroactive applications for the A1 certificate under the Framework Agreement will be rejected.

Framework Agreement in More Detail

Date of effect and geographical scope: The Framework Agreement enters into force on 1 July 2023, for countries that sign it by then. Countries invited to sign the Framework Agreement include the EU-27 member states, Norway, Iceland, Liechtenstein, and the United Kingdom.[3]

If a country signs the Framework Agreement after 1 July 2023, the Agreement will enter into force following the signature. It will not enter into force retroactively.

Personal scope: The Framework Agreement applies to employees who *cross-border telework*. Cross-border telework refers to work done through a digital connection with the employer's digital environment. Manual-labour activities such as construction work are not subject to the Framework Agreement.

Material scope: The Framework Agreement provides an option in which an employee who works 25 percent to 49.9 percent in the country of residence and 50.1 percent to 75 percent in the country of the employer can be covered by social security in the country of the employer.

> Example:
>
> An employee resides in Belgium and is employed by a company in The Netherlands. The employee works from home on a laptop and a smartphone connected to his employer's IT environment.
>
> If the employee in the example above works from home in Belgium more than 25 percent of his time but less than 50 percent, and the rest of time the employee works in The Netherlands, the employer and the employee can apply for an A1 certificate under the Framework Agreement to be covered by Dutch social security and avoid switching to Belgian social security.

Legal basis: The Framework Agreement is based on Article 16 (1) to derogate from the application of Article 13 (1) in Regulation 883/2004/EC in a situation of cross-border telework.

Administration: To make use of the Framework Agreement the employer or employee must file an application for an A1 certificate. With limited exceptions, a retroactive application for an A1 certificate under the Framework Agreement will be rejected. The Framework Agreement is not based on statutory law, which means that it does not take effect unless there is a duly filed application for an A1 certificate. It also means that a retroactive application can be denied.

An application for an A1 certificate under the Framework Agreement must be filed with the authorities in the country of the employer. The authorities in the country of the employer will issue an A1 certificate when the conditions under the Framework Agreement are met and they will inform the country of the employee's residence of their decision.

Duration of A1 certificate: An A1 certificate will be issued for a maximum duration of three years at a time. Renewals of the A1 certificate must be duly filed under the same strict deadlines as the first A1 certificate.

KPMG INSIGHTS

Although the Framework Agreement is a multilateral agreement, it is bilateral in its application. The Agreement concerns telework in the country of residence and the country of the employer only. However, it is probably not the intention to exclude the application of the Framework Agreement when an employee (who is working habitually in the country of residence and the country of the employer) goes on a business trip to another country that is a party to the Framework Agreement. It is therefore imaginable that occasional business trips will be allowed, but it will be at the discretion of each

KPMG INSIGHTS continued

country that is party to the Framework Agreement to decide how much of the activity that is outside the scope of the Agreement it will allow.

It is not known if any countries invited to sign the Framework Agreement will decline to sign or intend to sign later than 1 July 2023. Austria is the only country that has signed bilateral agreements with a neighbouring country in which the threshold for cross-border telework is set at 40 percent. (For related coverage, see *GMS Flash Alert* 2023-074, 4 April 2023.) This can be interpreted as a sign from Austria that it is not willing to accept a threshold above 40 percent and it could be an indication that Austria will not sign the Framework Agreement. At the same time, if every country invited to sign the Framework Agreement does so, it is difficult to imagine that Austria would be the only country not signing the Agreement.

Details about who signs and who does not should become evident in the next few weeks.

The most essential detail in the context of the Framework Agreement is likely to be the requirement that companies and employees must apply in due time for an A1 certificate. Retroactive application can be rejected. The Framework Agreement is an "opt-in," which means that it does not apply unless there is a valid A1 certificate.

Even though the Framework Agreement is not in effect yet, companies for which this Agreement is relevant should prepare and collect necessary information for the application so that once the Agreement comes into effect, the applications can be filed immediately.

Depending on an organisation's situation, it may be worthwhile to reach out to a qualified social security professional or your usual KPMG contact in order to understand how the Framework Agreement operates, its scope of application, and how an organisation should approach making applications for A1 certificates.

FOOTNOTES:

1 Full text of the Framework Agreement and Explanatory Memorandum can be found here.

2 Regulation 883/2004/EC on coordination of social security systems; Regulation 987/2009/EC about implementation of Regulation 883/2004/EC.

3 If the U.K. signs the Framework Agreement, it will apply only to those individuals covered by the EU-U.K. Withdrawal Agreement (for related coverage, and links to related articles, see *GMS Flash Alert* 2021-310, 17 December 2021). Individuals covered by the EU-U.K. Protocol on social security that entered into force following Brexit will not be covered by the Framework Agreement. The reason for this difference is that the EU-U.K. Protocol does not contain provisions that allow derogation from the statutory rules for social security.

* * * *

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 The Netherlands:

Daida Hadzic
EMA Head of Quality
Tel. +31 6 532 54 599 (m)
Hadzic.daida@kpmg.com

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

www.kpmg.com

kpmg.com/socialmedia

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to http://www.kpmg.com.