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GMS Flash Alert

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European Union – Framework Agreement for Social Security Enacted

From 1 July 2023, 18 countries[1] enacted a Framework Agreement for social security for cross-border telework. (For prior coverage, see *GMS Flash Alert* 2023-086, 21 April 2023.) The Framework Agreement for social security provides 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 working time.

Although the Framework Agreement is signed by 18 countries, its application is limited to work done only in the country of the employer and in the country of the employee's residence and both of those countries must be parties to the Framework Agreement.

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 his or her employer is located can work up to 25 percent in the country of residence and remain covered by social security in the country of his or her employer. This threshold is often insufficient to teleworkers who are usually denied more work from home by their employers because that would change which country is competent for social security.

The Framework Agreement provides an option to employers and employees in which an employee can work up to 49.9 percent in the country of residence and maintain coverage under the social security scheme in the country of the employer. This introduces greater predictability and flexibility in managing the social security tax affairs of a cross-border worker who works from home. To make use of the Framework Agreement, the employer must apply for an A1 certificate, which generally does not apply retroactively except under few and limited exceptions.

Framework Agreement in More Detail

The Framework Agreement for social security is limited in its geographical and personal scopes.

Although 18 countries have signed the Framework Agreement, making it a multilateral legislative instrument, the application of the Framework Agreement is bilateral. The Framework Agreement applies only when an employee

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works in the country of the employer and habitually pursues teleworking activities in the country of residence and the work in the country of residence amounts to less than 50 percent of his or her working time. Further, the country of the employer and the country of residence must be among the 18 countries that have signed the Framework Agreement.

The Framework Agreement applies only to employees who cross-border telework. "Cross-border telework" refers to work done through a digital connection with the employer's digital environment. "Manual" activities such as construction work, setting up a windmill, etc. are not subject to the Framework Agreement.

The Framework Agreement does not apply to branches. For example, an employee who resides in Belgium and works in The Netherlands at the Dutch branch of an Austrian company will not be eligible for an A1 certificate under the Framework Agreement. In this case, the threshold of 25 percent would apply.

Need for an A1 Certificate

To make use of the Framework Agreement the employer or employee must file an application for an A1 certificate. With single and 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 about their decision.

An A1 certificate will be issued for a duration of up to three (3) years at a time. It is at the discretion of each country party to the Framework Agreement to set the duration of A1 certificates, but it cannot exceed three (3) years at a time. Renewals of the A1 certificate must be duly filed under strict deadlines.

MEIJBURG & CO. INSIGHTS

The implementation of the Framework Agreement is in its early stages, and it is still unclear how strictly each country party to the agreement will implement the requirement for work to be done exclusively in the country of the employer and the country of residence. It is reasonable to expect that occasional business trips to countries that are not the country of the employer, or the country of residence will not jeopardize the validity of an A1 certificate issued under the Framework Agreement.

However, any working activity that takes place outside the country of the employer and the country of residence should be carefully considered to avoid (retroactive) cancellation or annulment of the A1 certificate issued under the strict conditions set in the Framework Agreement.

You can use KPMG quick scan to see if you can use the Framework Agreement for yourself and/or your employees. Regardless of the results in the quick scan, it is recommended that consultation take place with a professional adviser to get clarity on how opportunities provided under the Framework Agreement can be availed of.

FOOTNOTES:

1 The following countries have signed the Framework Agreement for social security: Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, The Netherlands, Liechtenstein, Luxembourg, Malta, Norway, Portugal, Poland, Slovakia, Spain, Sweden, Switzerland. The full list (in English) is available on the website of Belgium's social security authority (*FOD Sociale Zekerheid*) here. On the same webpage is a link to the Framework Agreement (in English) or click here.

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

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