

Life after Brexit: an update on social security coordination

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On 24 December 2020, after months of negotiations, the United Kingdom (“UK”) and the European Union (“EU”) finally reached a post-Brexit deal. The new agreement, the Trade and Cooperation Agreement (“Agreement”), marks the end of the transition period under the Withdrawal Agreement during which EU law applied to the UK until 31 December 2020.

Concluding the Agreement was an urgent matter because of the potential disruption in the relationship between the UK and the EU following the end of the transition period. Therefore, the Agreement will provisionally apply from 1 January 2021, although the text is still to be ratified by the European Parliament.

As expected, and given the results of these negotiations, the UK **no longer benefits from the free movement of persons**. In fact, many feared that a lack of agreement on social security coordination would create enormous difficulties for UK employers sending their workers to the EU. As it turns out, the Agreement incorporates a protocol on social security coordination (“Protocol”) that sets out a number of social security coordination measures aimed at protecting the social security entitlements of EU citizens and UK nationals after 1 January 2021.

In a nutshell, the Protocol:

- applies to persons legally residing in an EU Member State or the UK, as well as to the members of their family and survivors, facing a cross-border situation;
- covers a wide range of benefits, including sickness benefits, maternity and paternity benefits, invalidity benefits, old-age and survivor’s benefits, unemployment benefits and pre-retirement benefits (depending on each EU Member State, certain benefits in cash as listed in the annexes to the Protocol will not be subject to the coordination measures);
- confirms to some extent the four principles already enshrined in EU regulations:
 - the general rule remains that social security contributions are due in the country in which the employee is working, meaning workers are subject to one piece of legislation at a time (principle of unique payment);
 - workers should have the same rights and obligations as nationals of the country in which they are insured (principle of equal treatment and non-discrimination);
 - to some extent, previous periods of insurance, work or residence in other countries are taken into account (principle of aggregation of periods); and
 - under specific conditions and depending on the kind of benefits, workers are entitled to benefits in one country even if they live in another country (principle of exportability);
- provides for specific rules for **multi-state workers** working in the UK and one or more EU countries; and
- provides for specific rules for **detached workers** confirming, under certain conditions, the payment of social security contributions only in the employer’s country, even if the employee is temporarily working in another country. EU Member States must agree to these detached worker rules by 1 February 2021 for them to continue to apply, otherwise all social security contributions (employer/employee) will be payable in the country in which the employee is working. According to information from the International Relations Department of the National Social Security Office, Belgium has agreed to the detached worker rules by deciding, under the terms of the Protocol, to be considered as a “Category A” country .

The Protocol therefore applies outside the framework of the free movement of persons and will cease to apply 15 years after the entry into force of the Agreement.

However, for employment relationships involving an EU Member State and the UK that existed before 31 December 2020, UK employees in Belgium will have the “Beneficiaries of the Withdrawal Agreement” status, meaning that they will benefit from EU regulations on social security coordination as long as the cross-border situation continues without interruption. There will therefore be two regimes in place simultaneously, depending on whether the cross-border situation existed before 31 December 2020 or was established on or after 1 January 2021.

Feel free to contact our team should you have any questions on this matter.

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