

# IMPACTS OF THE EU-UK TRADE AND COOPERATION AGREEMENT ON EMPLOYMENT LAW IN THE UK AND GERMANY

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## I. KEY LABOUR & EMPLOYMENT RELATED ASPECTS OF THE TCA

- The EU and the UK entered into a Trade and Cooperation Agreement ("**TCA**") on 24 December 2020 to regulate their (trade) relationship beginning 1 January 2021.
- The parties agreed not to reduce present levels of employees' labour and social protection where such reductions of protection could result in damages to trade or investments between the parties. Areas named in the TCA are e.g. fundamental labour rights, fair labour and employment conditions, occupational health and safety as well as restructurings. In contrast, alterations to employment conditions without negative effects on trade may be permissible under the TCA.

For example, it is possible that the UK may remove the current requirement that holidays continue to accrue during an employee's sick leave, as a result of an European Court of Justice decision. Another potential change which may not affect trade or investment would be that holiday pay should no longer be based on all aspects of remuneration (in line with current EU case law), rather just on basic pay.

- Any infringement of these and other "protection obligations" will be subject to consultation between the TCA parties and/or examination and review by a panel of experts.
- This principle reflects the arrangement of the parties for a "level playing field for open and fair competition and sustainable development" within key economic areas such as labour and social policy, environment or climate protection or subsidy control. To this extent, the TCA provides for the possibility to apply unilateral rebalancing measures such as tariffs in the case of significant divergences in the aforementioned areas, where such divergences materially impact trade or investment between the parties.

## II. IMPLICATIONS OF THE END OF FREEDOM OF MOVEMENT

### 1. BUSINESS TRAVEL

- Sending EEA nationals to the UK to undertake business visits will in limited cases continue to be possible without a visa or work permit for up to 90 days within a timeframe of 6 months. This applies to activities such as attending meetings or contract negotiations, trade fairs and exhibitions, purchasing as well as after-sales or after-lease services.
- For the actual entry process of EEA nationals at the UK border, we recommend that employers provide their employees undertaking short business trips with a letter describing the activities that they will be undertaking in the UK, the duration of those activities and that the individual must not undertake any activities that go beyond the scope of the business visitor rules. In addition employees should in particular carry evidence of their accommodation, financial subsistence and their return travel arrangements if at all possible.

For employees from Germany, so-called A1 forms (the documents confirming the employees' continuous membership within the German social security scheme) will continue to be used for business trips to the UK.

- EEA nationals performing work outside the activities permitted for visitors will need to apply for a "Skilled Worker visa" (see below).
- Notably, starting 1 October 2021 EEA nationals will have to carry their passport (*Reisepass*) when entering the UK. The respective German ID-card (*Personalausweis*) will no longer suffice.
- For business travel from UK to the EU, in addition to the general requirements for travellers to Europe, extra requirements apply to business travellers such as entry requirements (document confirming the purpose and anticipated duration for the trip, demonstrating suitable accommodation and funds available for the trip) as well as requiring travellers to have certain documents (for example, at least six months to run on the passport).
- If you are travelling from UK to an EU country for less than 90 days in a 180-day period, you may be able to perform certain activities without getting a visa or work permit, for example going to a business meeting. Travelling for a period beyond 90 days in a 180-day period may trigger a need for a visa depending on the exact circumstances.

### 2. RECRUITMENT OF EEA NATIONALS IN THE UK / RECRUITMENT OF UK NATIONALS IN GERMANY

- Under the new UK immigration system, EEA nationals who wish to work in the UK will require sponsorship by their employer in the UK. In order to sponsor an employee's visa, the employer requires a sponsorship licence issued by the UK Home Office, and the sponsorship must be in accordance with the sponsorship rules. Sponsorship is only available for skilled employment, and there are minimum salary requirements and English language requirements
- As mentioned above, the current A1 forms for postings of German employees to the UK will continue to be used.

- EEA nationals who were already resident and working in the UK on or before 31 December 2020 should apply for Settled Status or Pre-Settled Status under the EU Settlement Scheme which inter alia provides for the permission for continuing work in the UK (deadline for applications 30 June 2021). In addition, for those who have been operating as frontier workers on or before 31 December 2020 there is the potential to apply for a frontier workers permit.
- In Germany, acceptance for non-EU nationals (as which UK nationals are considered since 1 January 2021) in general employment is principally based on Germany's economic needs. Basic conditions are an (in most cases officially acknowledged) original vocational qualification as well as a detailed offer of employment and a corresponding application to the competent authority for a residence and work permit, each depending on the individual case at hand. Since the respective permit process can take up to several weeks, we recommend to plan and start the application process in due course and ahead of time.
- UK nationals resident and working in Germany on or before 31 December 2020 can in general continue to do so but need to notify the competent authorities until 30 June 2021 to receive their continuous residence title (so-called "Aufenthaltsdokument-GB").

### 3. SOCIAL SECURITY AND INCOME TAX IMPLICATIONS

- The TCA incorporates a protocol on social security coordination (Protocol). The Protocol ensures that many of the EU social security coordination rules continue to apply to the UK.
- The purpose of the Protocol is to ensure employees and employers are only subject to the social security regime of a single state at any one time. The general rule is that contributions are payable in the country where the work is done, subject to Detached Worker rules which are special rules for individuals temporarily working outside their home country.
- Under the Detached Worker rules, if an employee based in the UK is sent to work in the EU for a short period of time and:
  - the assignment will not last for longer than two years and
  - the employee is not sent to replace another detached worker

they and their employer will continue to pay national insurance contributions in the UK (and vice versa).

- Each EU member state had until 1 February 2021 to decide whether it wanted to adopt the Detached Worker rules and HMRC has confirmed that all the Member States have chosen to apply the rules.
- The above detached worker rules are in general put into practice by way of employers obtaining A1 forms for their business travellers and detached workers before their deployment. A1 forms are applied for mainly electronically at the relevant competent social security authorities.
- For EU citizen detached workers working in the UK since before 31 December 2020 and vice versa, the social security situation remains regulated by the Withdrawal Agreement and continues to apply throughout the duration of the posting.
- For employees permanently working in multiple countries, the social security scheme of their home country applies if the majority of their work is performed there. If this is not the case, the social security law of the country of the registered office of the employer will apply (this will need to be assessed on a case-by-case basis).
- The UK-German Double Taxation Agreement of 2010 on avoiding double taxation of income per se taxable in the UK and Germany continues to apply beyond 1 January 2021. However, individual taxation of remuneration and its specific elements may change in course of the UK leaving the EU.

Our UK and German team are happy to support with any questions you might have. Please feel free to reach out to your key contacts shown below.



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Asia, Europe, the Middle East and the UK

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