



GMS Flash Alert

Immigration Edition

2020-106 | March 24, 2020



Germany - Measures to Combat COVID-19 Become More Intense

With this *GMS Flash Alert* we would like to provide an update on the measures taken in Germany, which we reported on earlier in *GMS [Flash Alert 2020-067](#)* (18 March 2020). While German diplomatic missions abroad have closed and visa application processing has been suspended, the action being urged in Germany is: 'stay at home' and 'distance socially'. This also has an impact on local immigration offices in Germany.

WHY THIS MATTERS

Companies with global presence and individuals operating across borders need to be increasingly aware of the relevant risks associated with travel and new work arrangements consequent to the COVID-19 outbreak.

Furthermore, the operations of the German immigration authorities (diplomatic missions abroad, immigration offices in Germany) have been reduced significantly, so new assignments to Germany or the international hiring of new foreign talent will be delayed; application processes for long-term residence and work permissions are impacted in the same way.

Enforcement of Travel Ban for Entries from Non-EU Member States

Following the guidelines of the EU Commission from 16 March 2020¹, Germany has limited entries from non-EU member states to Germany with immediate effect. The travel ban is supposed to last for 30 days – however, it is not clear, if (a) 30 days are considered as one month or (b) on actual/360-day basis. Furthermore, it is important to ascertain if 16 March 2020 is included in the calculation or not.² For example, the German diplomatic missions in India refer to "until April 15, 2020".³

Currently, crossing the border from a non-EU member state is possible for the following groups of travelers and under the following conditions:

- German nationals returning home,
- EU citizens (as well as British nationals) and citizens of the Schengen Associated States (Iceland, Liechtenstein, Norway, and Switzerland) as well as their family members, according to EU laws,⁴ who are returning home;
- Non-EU/European Economic Area (EEA) nationals, who are long-term residents under the Directive 2003/109/EC⁵ or otherwise are deemed to reside under the terms of another EU Directive⁶ or national law or who hold national visa;
- Non-EU/EEA national travelers with an essential function or need like health-care professionals, health researchers, and elderly-care professionals, frontier workers, transport personnel engaged in haulage of goods and other transport staff to the extent necessary, diplomats, staff of international organisations, military personnel and humanitarian aid workers in the exercise of their functions, passengers in transit or travelling for imperative family reasons, persons in need of international protection or for other humanitarian reasons.

The German Federal Ministry of the Interior, for Building and Community (in German: *Bundesministerium des Innern, fuer Bau und Heimat*) interprets the situation of non-EU/EEA nationals with residence and work permissions or national visa as follows:

- Holders of a valid EU Blue Card (in German: *Blaue Karte EU*), ICT-Card (in German: *ICT Karte*), Mobile-ICT-Card (in German: *Mobiler-ICT-Karte*), Settlement Permit (in German: *Niederlassungserlaubnis*), EU Long-Term Residence Permit (in German: *Erlaubnis zum Daueraufenthalt-EU*), Residence Permit (in German: *Aufenthaltserlaubnis*) or national visa can re-enter Germany **and additionally**
- have already a domicile or registered residence in Germany.⁷

Non-EU/EEA nationals with a valid national visa or long-term residence and work permission of an EU member state, the U.K. or Associated Schengen member state may also enter Germany for a **unavoidable transit** to their "home country," although it is not clear if "home country" means the country of citizenship or residence country. With regard to the purpose and the approach for holders of a German national visa or residence and work permission, the latter interpretation appears to be more reasonable.

Border Controls at Internal Borders and Reasons for Crossing the Border

Germany has limited, with effect as of 18 March 2020, the entry to Germany for EU member states and Schengen Associated States as follows:

- Entries from **Austria, Denmark, France, Italy, Luxembourg, Spain, and Switzerland** are subject to police controls and usually are prohibited. Controls do not only happen at land borders, but also when entering Germany on a plane or ship.⁸

With effect as of 19 March 2020, the land border crossing points at the borders to **Austria, Denmark, France, Luxembourg and Switzerland** are limited. The list of the limited border crossing points has been published on the website of the Federal Ministry of the Interior, for Building and Community.⁹

Entries to Germany from those countries are possible for returning German citizens as well as the following groups of travelers:

- Cross-border travelers for work purposes or to carry out professional contractual services **regardless of nationality** (including for commuters, seasonal workers, members of the European Parliament, and accredited diplomats).
- Cross-border travel for compelling reasons (such as medical treatment or death of a family member) **regardless of nationality**.

The Federal Ministry of the Interior, for Building and Community published a guidance document, which confirms that **cross-border delivery of services like in a so-called Vander-Elst setting** are also encompassed by the “cross-border travelers for work purposes” alternative. For this, the project contract acts as substitute of the employment contract with a local employer.¹⁰ So far, it had not been clear, if only locally-employed cross-border commuters could make use of the exemption.

Limited Services at German Diplomatic Missions and Immigration Offices

The majority of German diplomatic missions (approximately 3/4) have shut down and offer only emergency services. A harmonised practice isn't in place, and it is necessary to check the website of each diplomatic mission to see:

- how long the closure is supposed to last,
- if scheduled appointments will be performed or are cancelled,
- if cancelled appointments are rescheduled by the diplomatic missions proactively, and
- how they can be reached in case of emergency.

An emergency in this context also entails a visa application to be filed in order to travel to Germany as a non-EU/EEA national with an essential function.

More and more German immigration offices are closed for the public entirely or offer just limited slots for visits under enhanced measures to help prevent the staff from getting infected with COVID-19. Because almost 600 different immigration offices exist, the practice can vary greatly. However, there is a tendency that decisions are made according to written procedures and available long-term residence and work permissions are sent via mail to the personal addresses of applicants.

Stay-At-Home / Social Distancing – Measures

On 22 March 2020, Chancellor Angela Merkel and the Minister-Presidents of all 16 German Federal States agreed on further measures in light of Stay-At-Home and Social Distancing, which have to be implemented by each Federal State. Federal States are allowed to apply even more restrictive measures, so foreign nationals need to check the local measures being introduced.

The guidelines were announced during a press conference on 22 March 2020, and are published online.¹¹ The main topics concern the following:

- Residents of Germany (Germans and foreign nationals) are requested to reduce contacts with persons beyond members of their own household to a bare necessary minimum; in public spaces, wherever it is possible, it is required to keep a minimum gap of 1.5 metres between persons who are not members of the household.

- Remaining in a public space is only allowed by oneself, or with only one other person not being a member of the individual's household, or with family members regardless of the number; going to work, child-care, purchases, to visit the doctor, participate in sessions, essential appointments, and exams, social services, or individual sports and going for a walk is possible. With regard to going to work, supporting documentation provided by the employer is recommended, like an employer's confirmation explaining the need to work from the office and not from home.
- Catering trades including restaurants and bars are closed with the exception of delivery services for take-away food; service companies for personal care like hairdressers, cosmetic studios, massage studios, tattoo studios, and related services will be closed.

The above measures will apply for a period of at least two weeks.

KPMG NOTE

This *Flash Alert* is based on the available information on 23 March 2020 (at: 17:00 CET). Assignments to Germany and hiring new personnel from abroad will be significantly delayed due to the closure of many diplomatic missions. Regardless of available appointments, it is recommended that you not travel to Germany during the time of the travel ban. A high risk exists that the entry will be denied – unless, as described above, the traveler can prove he or she has an essential purpose.

With regard to the measures impacting social life in Germany, companies shall instruct their employees and assignees accordingly. A violation can become subject to criminal prosecution with a maximum sanction of five years of imprisonment.¹².

FOOTNOTES:

- 1 Guidelines are published as document COM (2020) 115 final and are available in English, [click here](#).
- 2 From a German administrative law perspective, the calculation of the period is subject to Sec. 31 of Administrative Procedure Act (in German: *Verwaltungsverfahrensgesetz* – abbreviated as “VwVfG”).² Pursuant to Sec 31 (1) VwVfG in conjunction with Sec. 187 (1) of the German Civil Code (in German: *Buergerliches Gesetzbuch*) the period started on 17 March 2020 with a perspective ending on April 15, 2020 at 23:59. See a translation on the Federal Ministry of the Interior [website](#), for Building and Community.
- 3 See, as example, the information of the German diplomatic missions in India [website](#) under the segment “Urgent Notice”.
- 4 See Art. 4 (1) of the Directive 2003/86/EC, [click here](#).
- 5 For more information, [click here](#).
- 6 Such as the Directives 2009/50/EC, 2014/66/EC or 2016/801/EC.
- 7 Available only in German, [click here](#).
- 8 Available only in German, [click here](#).

FOOTNOTES continued:

- 9 Available only in German [click here](#).
- 10 For more information, [click here](#).
- 11 Available only in German, [click here](#).
- 12 Those measures are usually based on Sec. 28 (1) (in conjunction with Sec. 32) IfSG.¹² A violation can become subject to criminal prosecution with a maximum sanction of five years of imprisonment (see Sec. 75 (1) and (3) IfSG; IfSG is the abbreviation of the German Infection Protection Act ("Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen (Infektionsschutzgesetz - IfSG)"), available only in German, [click here](#).

* * * *

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:



Dr. Thomas Wolf
Partner, Attorney at Law
Tel. + 49 30 530199 300
twolf@kpmg-law.com



Dr. Sebastian Klaus
Senior Manager, Attorney at Law
Tel. +49 69 951195 090
sklaus@kpmg-law.com

** Please note that KPMG LLP (U.S.) does not provide any labour law or immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

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

© 2020 KPMG Law Rechtsanwaltsgesellschaft mbH and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2020 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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>.