



GMS Flash Alert

Immigration Edition

2020-237 | May 18, 2020

Germany - COVID-19 Gives Rise to Further Limitations on Mobility through 15 June

This GMS *Flash Alert* provides an update on current developments in respect of the quarantine measures in Germany, which aim to slow down the spread of COVID-19, and the restrictions on non-essential travel to and within the European Union (EU).

On 8 May 2020, the European Commission issued a recommendation to the Schengen member states to extend the travel restrictions until 15 June 2020 (see GMS [Flash Alert 2020-227](#), 12 May 2020). Germany and other member states have followed, once again, the recommendation and extended the entry restrictions accordingly.

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 given the COVID-19 pandemic.

The travel restrictions currently in force limit international travel already to a significant extent. With the considerable impact of the travel restrictions on individuals' civil rights and on the global economy, the intention is that the restrictions will be imposed for only a short period of time.

In any case, multinational companies for the near-term are likely to face challenges planning for projects and activities overseas. Assignments to Germany and hiring new personnel from abroad will be delayed due to ongoing travel restrictions and border crossing limitations which will hamper the entry of most foreign workers into Germany.

It is important to note that regardless of the possession of a national visa, the KPMG International member firm in Germany recommends not travelling to Germany if the individual's usual residence is not in Germany already. A high risk exists that the entry will be denied unless the traveller can prove he or she has an essential purpose.

Actions by German Federal Government and EU in Response to Current COVID-19 Pandemic Developments

The German government continues to follow its multi-stage plan to restore normal living conditions. In a first step, Germany is reducing social distancing measures.¹ It is now being observed how this affects developments in terms of infection rates in individual administrative districts. If the infection rate rises again in individual administrative districts, localised intensification of social distancing measures could be reintroduced.

Intra-European Borders

In a second step, border controls at intra-European borders are to be gradually abolished by 15 June 2020, and the exercise of European freedom of movement is to be fully restored.²

At the borders with France, Austria, and Switzerland, an extension of temporary internal border controls from 16 May 2020 until 15 June 2020 is mandated. The same applies to the borders where air travel is concerned from Italy and Spain.

However, there will be some relaxation in the practical arrangements for land border controls. All border-crossing traffic will again be permitted to cross the border. In future, controls will no longer be systematic, but flexible and risk-based. There will be close coordination and cooperation with the police authorities of the neighbouring countries. The requirement of a valid reason for entry is retained in principle, but there will be additional facilitation for travel for family or personal reasons.

Should the infection rate change in one of the neighbouring countries, the intensity of controls can be quickly renewed in coordination with the respective country. The point of reference is the German guideline for the infection rate of more than 50 new infections per 100,000 inhabitants in seven days.

At the border with Luxembourg, internal border controls ended on 15 May 2020, however the Federal Police will intensify control and search measures in the 30 km border area.

At the border with Denmark, the Federal Minister of the Interior (*Bundesministerium des Innern, für Bau und Heimat*) is also prepared to discontinue border controls. The date will be set jointly with Denmark as soon as the Danish government has completed its ongoing consultations with its neighbouring states.

External EU Borders

The opening of the external borders of the EU/Schengen area should then follow in a third step as soon as the first two steps have been successfully completed and the evolution of COVID-19 infections is such that, the trend is downward, and in the external areas, cases will have been reduced to a reasonable level.

The European Commission invited all Schengen member states and Schengen associated states on 8 May 2020, to extend the temporary restriction on non-essential travel to the European Union (EU) again until 15 June 2020, since the current travel restrictions have proven to be helpful in slowing down the spread of COVID-19.³ (For prior coverage, see GMS [Flash Alert 2020-106](#) (24 March 2020) and GMS [Flash Alert 2020-193](#) (23 April 2020).)

KPMG NOTE

While some EU and Schengen member states and associated states are taking preliminary steps, like Germany, towards easing certain measures for fighting the spread of the pandemic, the situation remains fragile both in some parts of

KPMG NOTE continued

Europe and worldwide. This calls for continued measures at the external borders to reduce the risk of the disease additionally spreading through travel in the EU.

The extension of travel restrictions applies again to the "EU+ area", which includes all Schengen member states (including Bulgaria, Croatia, Cyprus, and Romania) and the four Schengen associated countries (Iceland, Liechtenstein, Norway, and Switzerland).

Under the restrictions introduced, crossing the border from a non-EU member state is possible for the following groups of travellers and under the following conditions:

- German nationals returning home;
- EU citizens (as well as British nationals) and citizens of the Schengen associated states as well as their family members, according to EU laws, who are returning home;
- Non-EU/European Economic Area (EEA) nationals, who are long-term residents under Directive 2003/109/EC⁴ or otherwise are deemed to reside under the terms of another EU Directive or national law or who hold national visa;
- Non-EU/EEA national travellers with an essential function or need like health-care professionals, health researchers, 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, and persons in need of international protection or for other humanitarian reasons.
- 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 a national visa can re-enter Germany if they already have a domicile or registered residence in Germany.⁵ The first entry of visa holders remains limited and can only be permitted if they have an essential function or a comparable urgent reason for entering Germany.

Lower Saxony Court Suspends Quarantine Measures for Returning Individuals after a Stay Abroad of Several Days

The Higher Administrative Court of Lueneburg has temporarily suspended the quarantine regulations for the federal state of Lower Saxony within the framework of an interim legal protection procedure.⁶

The three judges of the 13th Senate at the Higher Administrative Court in Lueneburg opined that the Corona Ordinance ordered the quarantine solely on the basis of the fact that someone had entered the country from abroad – without having an overriding probability of a coronavirus infection in this particular case. According to the court, there is no legal basis for applying such a far-reaching blanket provision.

On the contrary, the Corona Ordinance could only be issued on the basis of a regulation in the Infection Protection Act (IfSG). According to this, however, the corresponding requirements for the respective measures would then have to be met in accordance with the IfSG provisions. For the quarantine order, this means that it can only be applied to certain groups of people who have to be defined accordingly. For such groups, there must be an overriding probability, within the framework of a prognosis, that the individuals will carry the pathogen.

According to the court, to define a group of all persons entering the country from abroad is clearly too broad, since not all countries can be considered as “high-risk” areas. Therefore, specific risk areas would have to be designated and travellers from these areas could then generally be quarantined.

A quarantine can also be mandated for other risk groups such as people with symptoms or who have had contact with infected persons.

KPMG NOTE

The decision suspending the quarantine obligation only refers to the corresponding regulation of the Lower Saxony Corona Ordinance and therefore only applies to this federal state. The quarantine obligations in other federal states are therefore not directly affected.

However, the Federal Ministry of the Interior acted immediately and stated its recommendation to exclude travellers from other EU/EEA and Switzerland from the quarantine obligations.⁷

Individual federal states, such as North Rhine-Westphalia, have already followed the recommendation and have amended their regulations accordingly.⁸ This means, in the case of North Rhine-Westphalia, travellers from the EU/EEA and Switzerland do not have quarantine obligations there.

KPMG NOTE

This *Flash Alert* is based on the available information as of 15 May (at 16:00 CET).

It is the intent of the KPMG International member firm in Germany to issue updates as developments occur.

FOOTNOTES:

1 See the resolution of the Ministry of the Interior (*Bundesministerium des Innern, für Bau und Heimat*) (in German) „Beschluss: Maßnahmen zur Eindämmung der COVID19-Epidemie“ at: <https://www.bundesregierung.de/resource/blob/973812/1750986/fc61b6eb1fc1d398d66cfea79b565129/2020-05-06-mpk-beschluss-data.pdf?download=1> .

See press release of the Federal Ministry of the Interior (in German) “Änderungen im Grenzregime: Infektionslage erlaubt erste Lockerungen der Binnengrenzkontrollen” (13.05.2020) at: <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/05/aenderungen-im-grenzregime.html> .

3. See European Commission 8 May 2020 press release at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_823 .

FOOTNOTES continued:

4 See Art. 4 (1) of the Directive 2003/86/EC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0086&from=DE> .

5 See “Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents” at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003L0109> .

6 Please find the court decision (in German) at:
<http://www.rechtsprechung.niedersachsen.juris.de/jportal/portal/page/bsndprod.psml?doc.id=MWRE200001695&st=ent&doctyp=juris-r&showdoctyp=1¶mfromHL=true#focuspoint> .

7 See press release (in German) of the Federal Ministry of the Interior “Änderungen im Grenzregime: Infektionslage erlaubt erste Lockerungen der Binnengrenzkontrollen” (13.05.2020) at:
<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/05/aenderungen-im-grenzregime.html> .

8 Please find the Quarantine Ordinance of North Rhine-Westphalia (in German) at:
https://www.land.nrw/sites/default/files/asset/document/coronaeinrvo_ab_15.05.2020.pdf .

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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

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