

# GMS Flash Alert

2021-058 | February 19, 2021



## European Union – Posted Workers Included in Post-Brexit EU-U.K. Agreement

The Protocol on social security in the EU-U.K. Trade and Cooperation Agreement<sup>1</sup> (“EU-U.K. Agreement”), which defines the terms of the post-Brexit relationship between the European Union and the United Kingdom, includes an opt-in possibility in its provision for posted workers. This means that the countries party to the Agreement had to decide if they wanted to apply this provision in their future social security relations with the United Kingdom. The EU member states had until the end of January 2021 to notify the EU Commission if they wanted to apply the provision that allows continued affiliation to the social security system in the home country for up to 24 months.

As published in the Official Journal of the EU<sup>2</sup> on 16 February 2021, all 27 EU member states opted in to apply the provision for posting of workers in the social security Protocol of the EU-U.K. Agreement.

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### WHY THIS MATTERS

The confirmation by the EU member states that they will apply the posting provision for social security in the new EU-U.K. Agreement means that employers can update their mobility programmes and include information that a posting for up to 24 months to/from the U.K is possible under the EU-U.K. Agreement.

It is important to note that:

- the opt-in notification does not change the content of the posting provision in the EU-U.K. Agreement;
- it is not possible to maintain the application of social security in the home country for postings longer than 24 months.

## Context

On 1 January 2021, the U.K. left the EU Single Market and Customs Union, under the terms of the Withdrawal Agreement, and from that date it is no longer a party to EU policies and international agreements that apply to member states. The EU and the U.K. are now separate markets and distinct regulatory and legal entities.<sup>3</sup>

The EU-U.K. Agreement, which regulates the EU-U.K. trade and cooperation relationship from 1 January 2021, includes a Protocol on social security.

We provide below an extract of the Protocol for social security, highlighting the most significant changes for social security:

	EU-UK Trade and Cooperation Agreement	EU legislation for social security
 <b>Material scope</b>		
- Sickness benefits and benefits for occupational accidents and illness	✓	✓
- Maternity/paternity benefits	✓	✓
- Pre-retirement-, old-age and survivors' benefits and death grants	✓	✓
- Family benefits	✗	✓
- Unemployment benefits	○	✓
- Invalidity benefits	○	✓
 <b>Coordination rules</b>		
- Main rule: social security in the country/jurisdiction of work applies	✓	✓
- Posting up to 24 months	✓	✓
- Extension of posting for over 24 months*	✗	✓
- Posting over 24 months	✗	✓
- Work in more than one country/jurisdiction	✓	✓
- Special agreements (e.g extension of posting, deriving from rules for work in more than one country/jurisdiction etc.)	✗	✓
○ Specific conditions related to the EU-UK Trade and Cooperation Agreement		
* Unclear if and when a new posting under home country/jurisdiction's social security can be granted.		

Source: KPMG International, "EU-UK: A New Social Security Agreement" (2021).

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## KPMG NOTE

The new EU-U.K. Agreement introduces significant changes to the matters covered in the scope of social security and to the coordination rules that determine the country competent for social security. It is therefore important that employers assess whether the application of the Withdrawal Agreement and, in principle, the application of the EU legislation for social security is possible after 1 January 2021.

The Withdrawal Agreement regulates, among other things, social security between the EU and the U.K. from 1 February 2020 until 31 December 2020, when the U.K. formally left the EU. The Withdrawal Agreement made it possible for persons in a cross-border situation to continue benefiting from the EU legislation on social security.

Although the Withdrawal Agreement regulates the relationship between the EU and the U.K. until 1 January 2021, in the context of social security, persons who are covered by the Withdrawal Agreement can continue benefiting from the that Agreement (also from 1 January 2021) as long as their situation is uninterrupted.

An assessment of whether the Withdrawal Agreement can continue to apply can be a complicated technical task, but the interpretation of when a situation is interrupted is intended to be interpreted broadly. This means that the scope of the continued application of EU legislation for social security is wide and worth assessing for mobile workers in an EU-U.K. cross-border working situation.

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## FOOTNOTES:

1 Full text: [Trade and Cooperation Agreement Between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom and Great Britain and Northern Ireland, of the Other Part](#). Note that there might be additional bilateral conditions between the U.K. and Ireland, the U.K., Gibraltar and Spain, and the U.K. and Switzerland, etc.

For additional information, see the Commission's 24 December 2020 press release at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2531](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2531).

Also see KPMG's *GMS Flash Alert*: "[European Union – Social Security in a New Brexit Deal](#)" (2021-010, 8 January 2021).

2 Full text: [Official Journal of the European Union C55, Volume 64](#) (16 February 2021).

3 It should be noted that in respect of the cross-border movement of goods between the Republic of Ireland and Northern Ireland or between Northern Ireland and the rest of the United Kingdom, the rules of the "Protocol on Ireland and Northern Ireland contained in the Annex to the "Withdrawal Agreement" are applicable. For the text of the Withdrawal Agreement and related documentation, see: [https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement\\_en](https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement_en).

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