

GMS Flash Alert

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Denmark – Application of Social Security Rules in the EU-U.K. Agreement

In the European Union (EU), Denmark holds four derogations from EU cooperation.¹ A consequence of these “opt-outs” means that Denmark does not apply EU regulations for social security to third-country nationals.²

Recently, questions have come to our attention regarding whether the personal scope in the Protocol for social security³ outlined in the Trade and Cooperation Agreement (the Agreement) between the EU and the United Kingdom (U.K.)⁴ is applicable to Denmark because it covers all nationals. After some deliberation, it has been clarified that the EU-U.K. Protocol for social security and its personal scope that includes all nationals applies to Denmark if a third-country national meets all conditions.⁵

WHY THIS MATTERS

Employers in Denmark with employees who hold nationality in a third country if working in the U.K. should be aware that they could remain covered under Danish social security if all conditions outlined in the social security protocol are met.

However, this does not change the legal position for third-country nationals moving to/from Denmark and the EU. They are still excluded from the EU regulations for social security and their social security coverage must be dealt with under relevant national legislation.

Legal Context

The Agreement between the EU and the U.K. is based on article 217 of the Treaty on the Functioning of the European Union which states that the Union may conclude agreements with third countries establishing an association involving reciprocal rights and obligations, common action, and special procedures.

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The competent Danish authorities have concluded that Denmark can take part in such agreement between the EU and a third country – the U.K. in this instance – without it violating the derogations Denmark holds in respect of EU cooperation and that relate to third-country nationals.

Article SSC. 2 in the Protocol for social security of the Agreement states that the protocol applies to persons who are or who have been subject to the social security legislation of one or more EU member states and/or the United Kingdom.

The Danish authorities have now specified what it means to be or to have been subject to the social security legislation to be covered by the Protocol for social security when a person is not a national in the EU, EEA, or the U.K.: (i) a person has moved to/ is employed in the U.K. or an EU/EEA country after 31 December 2020 **and** (ii) that person, prior to that move/employment, was covered by social security legislation in the U.K. or the EU/EEA.

This means that a person who holds nationality in a third country and who begins working/residing in the U.K. after 31 December 2020 must be covered by social security legislation in an EU/EEA country or the U.K. prior to beginning work/resident in the United Kingdom.

KPMG NOTE

Due to the fact that Denmark does not apply EU regulations for social security to third-country nationals it was unclear for a while how Denmark intended to apply the personal scope in the EU-U.K. Agreement that does not limit the application of social security rules in regards to nationality/citizenship.

It is now evident that while Danish derogations to EU cooperation continue to apply and companies in the EU cannot apply the EU regulations on social security to third-country nationals moving to and from Denmark, social security rules in the EU-U.K. Agreement are applicable to third-country nationals moving between Denmark and the U.K. when certain conditions are met.

When a third-country national employed in Denmark moves to/works in the U.K., the person must be covered by social security legislation in an EU/EEA country or the U.K. prior to that move to/work in the U.K. For example, if a Danish employer hires a person who is a U.S. national and posts this employee to the U.K., the Protocol on social security between the EU and the U.K. will apply if this employee prior to that posting was covered by social security in an EU/EEA country or the United Kingdom.

There are still details that need to be clarified. For example, if the U.S. national in the above example is first covered by social security in the U.K. and is then hired by a Danish company who posts him/her to the U.K., will the competent Danish institution grant coverage under Danish social security in such case? This question is relevant because the Danish authorities today have a restrictive interpretation of the EU regulations for social security. If a person is posted to a country where he previously was covered by social security, the Danish institutions requires at least two years of coverage in Denmark to grant coverage under Danish social security during a posting to that country. Will this practice be applied to the Protocol?

In any case, it is important that Danish companies note that third-country nationals can be covered by Danish social security when they work in the U.K. assuming they meet all conditions. Third-country nationals are not excluded from the EU-U.K. Agreement in the way they are from EU regulations for social security when they work in the EU.

FOOTNOTES:

- 1 On the Folketinget (Denmark's Parliament) website: "[The Danish opt-outs from EU cooperation](#)" (20 April 2021).
- 2 On the EU's EUR-Lex website: [Regulation \(EU\) 1231/2010 of 24 November 2010 extending Regulation \(EC\) 883/2004 and Regulation \(EC\) 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality](#), notion (19) states that the extension of the coordination rules for social security to third-country nationals does not apply to Denmark.
- 3 [GMS Flash Alert 2021-010](#), 8 January 2021.
- 4 Full text on the EU's *Europa* website: "[Trade and Cooperation Agreement between the European Union and the United Kingdom](#)."
- 5 See the following webpage (in Danish) of the Danish Ministry of Finance's Agency for Digitisation, "Social sikring i udlandet" at: <https://www.borger.dk/danskere-i-udlandet/Arbejde-i-udlandet/International-social-sikring> .

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