

A BDO
Legal Guide to
the Trade and
Cooperation
Agreement
between the
EU and the UK



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INTRODUCTION.

Brexit has far-reaching consequences for both companies based in the UK and for companies doing business with companies in the UK.

The UK formally left the European Union on 1 February 2020, with a transition period being in effect from 1 February 2020 to 31 December 2020. During this period, on 24 December 2020, the UK and the EU agreed on a “Brexit deal”. This agreement includes arrangements for the future trade relationship between the EU and the UK. It has been provisionally approved by both the EU and the UK with final approval by the European Parliament still pending. The ending of the aforementioned transition period means that European laws and regulations no longer apply to the UK as from 1 January 2021. What is the impact of Brexit and what action is needed regarding employment and social security law matters?

As a result of Brexit, the free movement of workers has ended. This has serious consequences from an employment and social security law perspective. For instance, this means that a work and residence permit must be arranged in order to be able to employ British workers in the EU and vice versa. In addition, it is possible that countries within the EU can decide to apply new social security rules for posted workers. Companies wishing to employ workers in the UK and vice versa will have to take additional measures, which will most likely also have financial consequences. In this whitepaper we provide you with a general outline on this issue from the perspective of 15 different countries.

ARE YOU OR YOUR EMPLOYEES AFFECTED?

The Trade and Cooperation agreement between the EU and the UK has profound consequences for the employment of workers in or from the UK. It is of the utmost importance that employers of cross-border EU/UK workers take the following questions into consideration.



Are the terms of employment still in line with laws and regulations?



Must a work and/or residence permit be applied for?



Are diplomas and professional qualifications still recognised?



Has applicable social security legislation changed?



Has the competent court or the applicable law in cross-border disputes changed?

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1. BRITISH EMPLOYEE GOING FROM THE UK TO BELGIUM | PERMANENT

A. Is a permit needed?

As of 1 January 2021, British employees who were not yet established in Belgium before this date will be considered to be third country nationals and will need a work permit and residence permit in order to work in Belgium on a permanent basis (both permits combined in a "single permit").

In principle, to obtain a work permit, it must be demonstrated that recruitment efforts in Belgium have not yielded results. Exemptions from this obligation apply to several groups, such as highly skilled workers and management staff.

British employees who were already legally established in Belgium on 31 December 2020 and who remain so after 1 January 2021 can obtain a new type "M" residence permit. This document further exempts them from the obligation to obtain a work permit.

B. Consequences for applicable law

If a Belgian court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Rome I Regulation. In principle, the employment contract is governed by the law chosen by the parties. However, this choice may not deprive an employee of the protection afforded to them by mandatory provisions under the law that would have been applicable to the contract without a choice of law (i.e. the objective applicable law). In most cases, this is the law of the country where the employee habitually performs their work.

C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security. Much of this is in line with current EU legislation. Employees will be subject to the social security laws of one country only. Social security contributions will generally be paid in the country where the employee performs their work.

2. BRITISH EMPLOYEE GOING FROM THE UK TO BELGIUM | TEMPORARY

A. Is a permit needed?

The agreement between the EU and the UK also contains arrangements on the temporary employment of workers. Short business trips of up to 90 days for meetings and gatherings remain permitted without a work permit as long as no goods or services are provided to the public. There are also special provisions to facilitate intra-group secondments, although these have not yet been formalised in local legislation and currently remain not applicable. For other forms of temporary employment, a work and residence permit will in many cases be required due to the end of the free movement of workers.

B. Consequences for applicable law

If a Belgian court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the amended Posting Workers Directive (PWD) and/or the Belgian law of 5 March 2002 on the secondment of workers to answer the question which legal system governs the employment contract. Working conditions of the country in which an employee habitually carries out their work may in principle continue to apply, also if the employee temporarily carries out work in the host country. However, the PWD and Belgian law of 5 March 2002 safeguard that employees temporarily posted to Belgium are at least entitled to the specific minimum employment conditions that apply in Belgium, i.e. all provisions of Belgian employment law being criminally sanctioned.

C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security for temporary workers. Much of this is in line with current EU legislation. A worker who is temporarily posted to another country by their employer continues to be subject to the social security legislation of their home country, provided that the posting does not exceed 24 months and the worker is not replacing another posted worker.

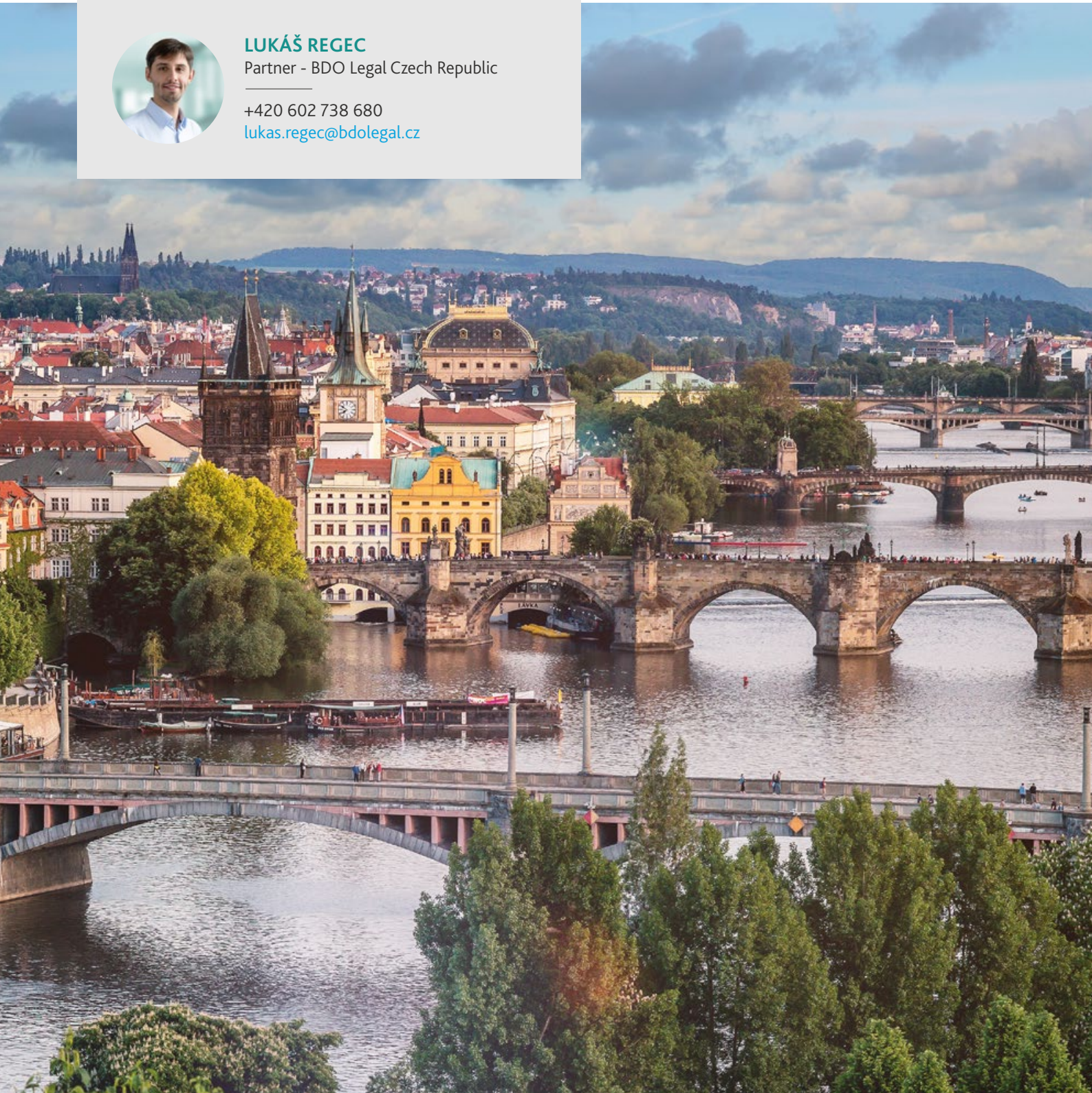
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1. BRITISH EMPLOYEE GOING FROM THE UK TO THE CZECH REPUBLIC | PERMANENT

A. Is a permit needed?

Persons who resided or worked in the Czech Republic during the transition period (1 February 2020 to 31 December 2020) and their family members will enjoy the same position as nationals of EU Member States for life. Their status may change in the future (e.g., from being students to being employees or self-employed) without losing any of the benefits. It is advisable to apply for a short-term residence permit since this will simplify any potential disputes with the authorities.

As of 1 January 2021, UK nationals must obtain a residence and work permit to live and work in the Czech Republic. A simplified single point of contact permit (the so-called *employment card*) serves as both. The Czech labour market is relatively protectionist; prior to hiring a foreign national the prospective employer must attempt to fill the opening with an EU national. The opening may be offered to a British citizen only after 30 days.

B. Consequences for applicable law

Applicable law is determined by the Rome I Regulation that provides that employment contracts shall be governed by the law chosen by the parties. However, in employment contracts, choice-of-law clauses are only permissible to a limited extent. They must not lead to withdrawal of mandatory provisions of the applicable law if no such choice had been made, i.e., the objectively applicable law. In most cases, this will be the law of the country where the employee habitually performs their work. If the country where the employee habitually performs their work changes permanently, the objectively applicable law also changes.

C. Consequences for social security

The EU-UK withdrawal agreement also contains provisions on coordination of social security systems. Much of this is in line with the existing EU legislation. Employees will be subject to the social security laws of one country only. Social security contributions will generally be paid in the country where the employee habitually performs their work. The rules for multi-state workers and posted workers were adopted from current EU legislation and are to remain essentially the same. However, certain areas of the social security are not covered by the EU-UK agreement, e.g., nursing care.

2. BRITISH EMPLOYEE GOING FROM THE UK TO THE CZECH REPUBLIC | TEMPORARY

A. Is a permit needed?

The EU-UK withdrawal agreement also contains provisions on the temporary employment of workers. For example, the EU and the UK have agreed that specific measures will be taken to facilitate intra-group employee posting (for a maximum of three years). In addition, short business trips of up to 90 days for meetings and gatherings, for example, are still permitted if no goods or services are provided to the public. For other forms of temporary employment, a work and residence permit may be required due to the end of the free movement of workers. We have yet to hear about any standard employee-posting procedures.

Generally, British citizens will be able to travel to the Czech Republic on a visa-free basis cumulatively for up to 90 days in a 180-day period, provided that the purpose of their stay is not work. If an employee posting is not the case, a work stay (irrespective of its length or type) will always require a residence and work permit.

B. Consequences for applicable law

The consequences for applicable law in the case of a British employee temporarily coming to the Czech Republic are the same as for them coming on the permanent basis described above. Nevertheless, even if the place where work is habitually carried out remains outside the Czech Republic, only the mandatory provisions of the Czech law apply, particularly minimum wage, working hours, paid-leave entitlement, anti-discrimination and work safety rules etc.

C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security for short-term workers, mostly in line with current EU legislation. A worker who is temporarily posted to another country by their employer continues to be subject to the social security legislation of the home country, provided that the posting does not exceed 24 months and the worker is not replacing another posted worker.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO FRANCE | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a distinction must be drawn between British citizens already working in France and those who will start work after 1 January 2021.

British workers already working in France shall maintain the rights they had prior to 1 January 2021. Nevertheless, they will have to apply for a residence permit before 30 June 2021, which will in principle be granted.

On the other hand, British workers starting work after 1 January 2021 will be considered as any other non-European citizen. Therefore, they will have to apply for a work permit in France. However in any case the French Labour administration (the “*DIRECCTE*”) can refuse a foreigner’s authorisation to work if they consider that the level of unemployment is too high, based on statistical data of the profession and the geographical area as well as the search for candidates already carried out by the company.

B. Consequences for applicable law

If a French court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Rome I Regulation. Under this regulation, employment regulations are governed by the law chosen by the parties (article 3 Rome I Regulation).

However, the choice of law cannot deprive the employee of the more favourable mandatory French laws. In addition, regardless of the choice of Law made by the parties, all applicable overriding mandatory provisions should apply (article 9 Rome I Regulation). It should be noted that almost all French Employment laws are overriding mandatory provisions.

C. Consequences for social security

As a matter of principle, contributions should be paid in the country where the professional activity is carried out (whether employed or self-employed). This rule is incorporated in the Trade and Cooperation Agreement. Consequently, if a British citizen is working in France, the social contributions must be paid in France.

2. BRITISH EMPLOYEE GOING FROM THE UK TO FRANCE | TEMPORARY

A. Is a permit needed?

The question of a work permit (and also visa) and the choice of the applicable work permit will depend on the exact nature and purpose of the assignment in France.

When a posted employee comes to France for a paid activity, they must obtain a work permit. In France there are several types of work permits in relation to the situation of employees and the purpose of the posting.

When employees are sent to France as part of an intra-group mobility scheme, posted employees can obtain the multi-year "ICT Posted Employee" ("Intra-Corporate Transfer") residence permit.

For foreign employees posted to third companies, access to the French labour market remains possible thanks to the "Temporary Worker" temporary residence permit, subject to prior application for a work permit, requested by the employer company from the DIRECCTE foreign labour department.

The French Labour administration can also refuse a foreigner's authorisation to work in the same situations as referred to above.

B. Consequences for applicable law

The rules related to posting in France apply regardless of where the employer company which posts their employee in France is established. Brexit has therefore had no impact on the rules of the posting of employees in France.

As a reminder, employees posted to France benefit from a firm core of rules from which it is impossible to deviate. These are mainly the rules on minimum wages, but also those on working hours and the prohibition of discrimination.

C. Consequences for social security

The EU-UK Trade and Cooperation Agreement provides for the continuation of the posting regime with the UK. With the exception of the extension of the posting (posting is now strictly limited to 24 months), the other social security rules are, for the most part, taken over, in particular those relating to compulsory prior information.

For assignments starting on or after 1 January, the so-called A1 certificate of coverage (a form stating the country which covers the worker's social insurance) must still be used.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO GERMANY | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a work and residence permit is required to employ British workers in Germany. They do not need a special entry visa. An exception applies to British employees who were already employed by a German employer and living in Germany before 1 January 2021, who do not need a work permit. They do however have to apply for a new residence permit from the competent foreigner's authority. The competent foreigner's authority is where the employee has their place of residence in Germany. This is possible until 30 June 2021. Employers should request the residence document to be presented as of July 2021.

The above does not apply if the employees hold dual citizenship, i.e. are also citizens of an EU state.

B. Consequences for applicable law

From a German perspective, the national law which is applicable to an employment relationship is determined by the Rome I Regulation. Accordingly, individual employment contracts shall be governed by the law chosen by the parties. However, choice of law clauses are permissible in employment contracts only to a limited extent, as they must not lead to the withdrawal of the protection of mandatory provisions of the applicable law without a choice of law, i.e. the objectively applicable law. In most cases, this will be the law of the country where the employee habitually performs their work. If the country where the employee habitually performs their work changes permanently, the objectively applicable law also changes.

C. Consequences for social security

The Trade and Cooperation Agreement between the EU and the UK largely replicates the current EU social security coordination regulations. Therefore, in general, individuals will be subject to the social security legislation of one country only. Contributions will generally be payable in the country where activities are undertaken with special provisions for multi-state and posted workers. The rules for multi-state workers and posted workers were essentially adopted and are therefore to remain broadly the same. However, single areas of the social security system are not covered by the Trade and Cooperation Agreement, e.g. nursing care insurance.

2. BRITISH EMPLOYEE GOING FROM THE UK TO GERMANY | TEMPORARY

A. Is a permit needed?

As of 1 January 2021, UK nationals arriving in Germany are subject to German law on third-country nationals. However, British citizens do not require a visa for visits and/or business trips involving a stay of up to 90 days in a 180-day period. This applies only if they will not be pursuing an economic activity. When crossing the border, travellers must carry with them the necessary documents for entry into the Schengen states, in particular a valid travel document and evidence of the purpose and circumstances of the intended stay.

B. Consequences for applicable law

From a German perspective, the national law which is applicable to an employment relationship is determined by the Rome I Regulation. Thus, the above statements in relation to permanent employment in the determination of applicable law, in general, similarly apply to temporary employment in Germany. However, if a British employee is going to Germany only temporarily, it is generally assumed that the country where the employee habitually performs their work - originally the UK - will not change. In this case, there is also no change of the objectively applicable law governing the employment relationship. However, depending on the kind of activity carried out in Germany by British employees, various mandatory German minimum working conditions might have to be taken into account additionally by their UK-based employers. The legal basis for this is the German Employee Posting Act (Arbeitnehmer-Entsendegesetz).

C. Consequences for social security

The Trade and Cooperation Agreement between the EU and the UK also contains provisions regarding social security coordination for posted workers. Much of this replicates the EU social security coordination regulations. A worker who is posted to another country in general continues to be subject to the social security legislation of the home country, provided that the posting is limited to up to 24 months and the posted employee does not replace a previously posted employee.



ITALY.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO ITALY | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a work and residence permit is required to employ British workers in Italy. There is a fixed quota of permits available each year, and a non-EU citizen requires gainful occupation with an Italian employer or the financial means to support themselves while in Italy.

B. Consequences for applicable law

If an Italian court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Rome I Regulation. In principle, the employment contract is governed by the law chosen by the parties. However, this choice may not deprive an employee of the protection afforded to them by mandatory provisions under the law that would have been applicable to the contract without a choice of law (i.e. the objective applicable law). In most cases, this is the law of the country where the employee habitually performs their work.

C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security. Much of this is in line with current EU legislation. Employees will be subject to the social security laws of one country only. Social security contributions will generally be paid in the country where the employee performs their work.

2. BRITISH EMPLOYEE GOING FROM THE UK TO ITALY | TEMPORARY

A. Is a permit needed?

Yes. Italian immigration laws provide for a number of different permits that are granted for specific reasons as follows:

- Blue Card: The Blue Card is a special permit of stay issued to highly qualified non-EU citizens and high ranking employees, in order to be "hired by an Italian employer". This is granted if an employment agreement has been entered into or a binding job offer has been given to the highly qualified foreign worker. This permit will be valid for: (a) the duration of the employment relationship + 3 months, in case of a fixed-term employment; or (b) two years, in case of permanent employment.
- Intercompany Secondment, in Group Companies or in the context of Provision of Services: Secondment in Italy is possible within the same company group, or in the context of the provision of services in favour of an Italian company. This only applies to high ranking employees or highly skilled and qualified employees. This differs from the blue card permit in that the employee remains employed by the posting company while providing services in the hosting company. The duration of this permit can be up to 3 years. At the end of the first year of assignment the hosting entity can then hire the employee.
- Self-Employment Permit for Company Directors or Shareholders: The Self-Employment permit is granted to applicants who are: (a) President, or member of the Board of Directors, or CEO of an Italian limited company which has been active for "at least three years" before the permit application was submitted; or (b) shareholders working in a limited company (e.g. the applicant possesses 50% of a company).

B. Consequences for applicable law

If an Italian court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Italian Legislative Decree no. 122/2020, only if more favourable for the employee.

C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security for temporary workers. Much of this is in line with current EU legislation. A worker who is temporarily posted to another country by their employer continues to be subject to the social security legislation of the home country, provided that the posting does not exceed 5 years and the worker is not replacing another posted worker.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO LATVIA | PERMANENT

A. Is a permit needed?

Upon withdrawal of the UK from the EU, British citizens and their family members retain all the rights to work in Latvia if they entered before 31 December 2020. However, if they plan to continue residing in Latvia, they would need to submit a special application to the Office of Citizenship and Migration Affairs (OCMA) before 30 June 2021 and obtain a new residence permit.

For other employees who are planning to work in Latvia - as of 1 January 2021, a residence permit with working permit is required for British employees arriving to work in Latvia; the requirements of which are included in the Immigration Law. The most common permissions for British employees will be: residence permit with work authorisation, EU Blue Card for highly skilled foreign nationals, etc. After 5 years of holding a temporary residence permit, they can apply for and obtain a permanent residence permit.

B. Consequences for applicable law

In accordance with Latvian Employment law parties may choose which law will govern the employment relationship. If the employee works in Latvia, but the parties have agreed that UK law will apply, it should be noted that such choice of law may not revoke or restrict the protection of an employee that is determined by prescriptive or prohibitive norms of Latvian legislation. If the parties have not agreed on the applicable law, general requirements are included in the Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement. The Rome I Regulation will determine applicable law for contractual disputes, which is most often the law of the country where the employee habitually performs their work.

C. Consequences for social security

In accordance with the EU-UK Trade and Cooperation Agreement, British citizens already employed in Latvia will retain their right to healthcare, pensions and other social security benefits. The Agreement stipulates that UK citizens in Latvia (or any other EU country) are subject to Latvian social security legislation and thus will make social security contributions in Latvia if the work is mostly performed there (25 percent or more). Some benefits, for example, old age pension, can be exported to the UK once the employee is no longer working in Latvia.

With regards to health care, it should be noted that newly arriving UK nationals must also have health insurance in addition to rights to receive Latvian health care if social contributions are made in Latvia. Generally, EU law principles still are applicable – although the principle of the free movement of persons has ceased to be in force, the principle of equal treatment and non-discrimination when granting social security benefits are still relevant.

2. BRITISH EMPLOYEE GOING FROM THE UK TO LATVIA | TEMPORARY

A. Is a permit needed?

The EU-UK Trade and Cooperation Agreement stipulates that UK nationals may conduct visa-free short-term business trips to attend meetings or conferences or engage in consultation with business associates. In addition, research and design, marketing research, training, attending trade fairs and exhibitions, sales trips except for direct sales, purchasing, after-sales service, commercial transactions, tourism, and translation and interpretation services may be carried out without obtaining a visa under the condition that this short-term period does not exceed 90 days in a 180-day period. For these situations UK nationals must have a passport that is valid for at least six months. It has been reported that starting from 2021 all non-EU citizens entering the Schengen Area without a visa will first need to obtain approval through the European Travel Information and Authorisation System.

A temporary residence permit and work permit will be required if the short-period stay exceeds 90 days in a 180-day period. Also, as a consequence of the ending of the free movement of workers, a work permit is needed in case of intra-corporate transfers, performing service contracts in a country without the employer's presence or providing services as a self-employed person.

B. Consequences for applicable law

The choice of law is regulated by the Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement, as well as the Rome I Regulation (or the UK domestic alternative of it). If the employment agreement or additional agreement for the performance of short-term work will be governed by Latvian laws, any disputes or payment issues will be governed in accordance with Latvian national legislation. Additionally, it should be noted that on most occasions short-term work should be also viewed in the light of the posted workers legislation. This requires the assurance of minimal working conditions and employment provisions (shift hours, paid leave etc.) as provided for by the laws and regulations of Latvia.

C. Consequences for social security

Due to the nature of short-term work, posted British workers will continue to make social security contributions in their respective country and will not be required to make such contributions in Latvia. This rule is lifted if the posting period exceeds 24 months; in such cases residence and work permits must be obtained and social contributions made in Latvia.

In respect to health care, it should be noted that the European Health Insurance Card still grants the right for UK nationals holding such a valid card to receive state-provided medical treatment anywhere in the EU or in the European Economic Area. According to publicly available information, it is expected that UK nationals will have the possibility to obtain a new Global Health Insurance Card after the European Health Insurance Card expires.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO THE NETHERLANDS | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a work and residence permit is required to employ British workers in the Netherlands. British workers do not need an authorisation for a temporary stay (special entry visa). However, the employer must determine that there is no 'priority workforce' on the labour market. This is possible by demonstrating that recruitment efforts have not yielded results. A more flexible policy applies to certain groups, such as for highly skilled migrants.

An exception applies to British employees who were already employed by a Dutch employer and living in the Netherlands before 1 January 2021. They do not need a work permit. They do however have to apply for a new residence permit. This is possible until 30 June 2021.

B. Consequences for applicable law

If a Dutch court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Rome I Regulation. In principle, the employment contract is governed by the law chosen by the parties. However, this choice may not deprive an employee of the protection afforded to them by mandatory provisions under the law that would have been applicable to the contract without a choice of law (i.e. the objective applicable law). In most cases, this is the law of the country where the employee habitually performs their work.

C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security. Much of this is in line with current EU legislation. Employees will be subject to the social security laws of one country only. Social security contributions will generally be paid in the country where the employee performs their work.

2. BRITISH EMPLOYEE GOING FROM THE UK TO THE NETHERLANDS | TEMPORARY

A. Is a permit needed?

The agreement between the EU and the UK also contains some arrangements on the temporary employment of workers. For example, the EU and the UK have agreed that specific measures will be taken to facilitate intra-group secondments (for a maximum of 3 years). In addition, short business trips of up to 90 days for meetings and gatherings, for example, remain permitted as long as no goods or services are provided to the public. For other forms of temporary employment, a work and residence permit will in many cases be required due to the end of the free movement of workers.

B. Consequences for applicable law

If a Dutch court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the amended Posting Workers Directive (PWD) and/or the (Dutch) Act on Employment Conditions for Seconded Employees in the European Union (WagwEU) to answer the question which legal system governs the employment contract. Working conditions of the country in which an employee habitually carries out their work may in principle continue to apply, also if the employee temporarily carries out work in the host country. However, the PWD and WagwEU safeguard that employees temporarily posted to the Netherlands are at least entitled to the specific minimum employment conditions that apply in the Netherlands.

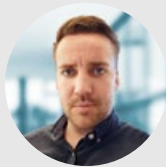
C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security for temporary workers. Much of this is in line with current EU legislation. A worker who is temporarily posted to another country by their employer continues to be subject to the social security legislation of the home country, provided that the posting does not exceed 24 months and the worker is not replacing another posted worker.

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1. BRITISH EMPLOYEE GOING FROM THE UK TO NORWAY | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a work and residence permit is required to employ British workers in Norway. Exceptions are British citizens residing with a right of residence (employee) in Norway before 1 January 2021. The employee must apply for a residence permit in accordance with the usual regulations and cannot continue the employment in Norway until a residence permit has been obtained. The employee can stay in Norway until they have received an answer to their application.

British citizens who have lived and had a right of residence in Norway for five years or more can apply for a permanent residence permit.

If the British employee is a skilled worker, they can apply for a residence permit to be a jobseeker for up to six months, as long as they also meet the other requirements for the permit. If they apply for such a permit after arriving in Norway, the six months are calculated from the date of arrival in Norway.

If the British citizen is not a skilled worker, they cannot obtain a residence permit to apply for a job in Norway after 1 January 2021.

B. Consequences for applicable law

There are exceptions to the main rule, based on industry, competence, seasonal work, etc. Requirements set for the individual must be considered in each individual case.

C. Consequences for social security

The main rule according to the National Insurance Act § 2-1, is that everyone who resides in Norway is a compulsory member of the National Insurance.

A resident of Norway is considered to be a resident of Norway when their stay is intended to last or lasts for at least 12 months. A person who moves to Norway is considered a resident from the date of entry, when that person is going to Norway to work on a permanent basis.

2. BRITISH EMPLOYEE GOING FROM THE UK TO NORWAY | TEMPORARY

A. Is a permit needed?

The Immigration Regulations set out conditions for employees who are to work temporarily in Norway. Requirements are set for both the employee and the employer. Temporary residence due to work also basically requires a residence permit. There are exceptions to this provision based on industry, competence, etc. Requirements are set for both the employee and the employer.

The legislation states in which cases a residence permit is required, and in which cases it is not necessary or not possible.

B. Consequences for applicable law

Rules on entry and residence permits are regulated in Norwegian law by, among others, Immigration Law and Regulations.

C. Consequences for social security

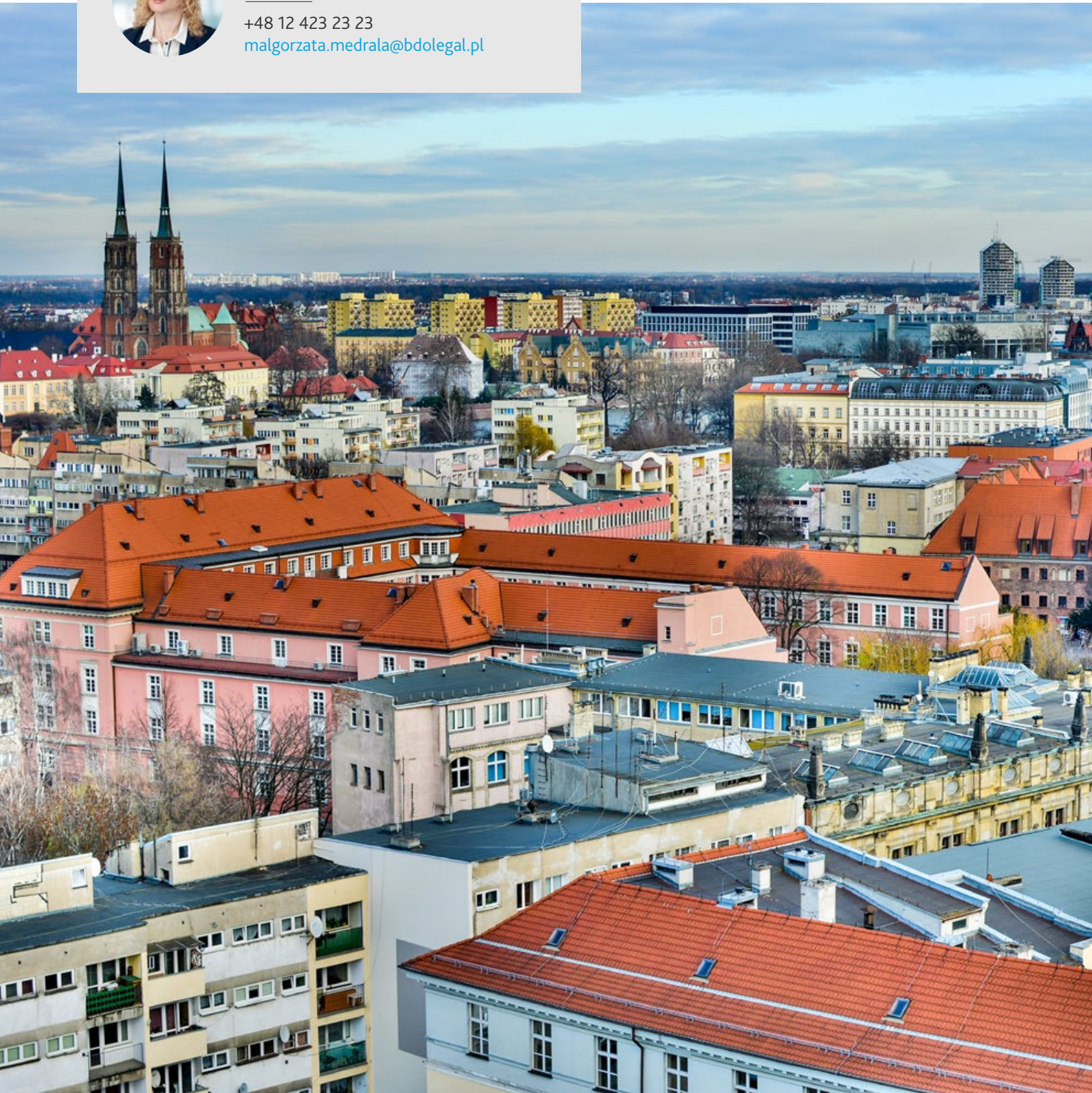
According to the National Insurance Act, an employee is basically a compulsory member of the National Insurance in the country where they are working.

The employee may, with approved documentation of membership in another country's social security system, be exempted from this obligation if it is a question of temporary residence.

POLAND.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO POLAND | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a work and residence permit is required to employ British workers in Poland. They are treated as citizens of third countries. There is also an obligation to conduct a labour market test, applying the principle of priority of employment of own and EU citizens. However there are some exceptions to the obligation of carrying out this test, based on a list of professions and jobs specified by the Province Governor.

There are a few exceptions to the abovementioned general rules:

1. British employees who were already employed by a Polish employer and were living in Poland before 1 January 2021 do not need a work permit. However, they have to apply for a new residence permit before 31 December 2021.
2. British employees arriving in Poland up to 31 December 2021 do not need a work permit. However, they have to apply for a new residence permit. It is important to note that this is only possible within the 3 months from the date of entry to Poland.
3. If British citizens have a residence permit and work permit in an EU country they are not obliged to apply for a work permit in Poland. The important condition is that they are appointed by an employer with a registered office in an EU member country.

B. Consequences for applicable law

If a Polish court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Rome I Regulation. In principle, the employment contract is governed by the law chosen by the parties. However, this choice may not deprive an employee of the protection afforded to them by mandatory provisions under the law that would have been applicable to the contract without a choice of law (i.e. the objective applicable law). In most cases, this is the law of the country where the employee habitually carries out their work (see: article 8 of the Rome I Regulation).

C. Consequences for social security

Employees will be subject to the social security laws of only one country. Social security contributions will generally be paid in the country where the employee performs their work.

2. BRITISH EMPLOYEE GOING FROM THE UK TO POLAND | TEMPORARY

A. Is a permit needed?

British citizens are exempt from the requirement to have a visa for a short-term stay in the Schengen area, a short stay which must not exceed 90 days in a 180-day period. If the stay exceeds 90 days in a 180-day period there is requirement to have a visa or, if necessary, a temporary residence permit.

Short business trips of up to 90 days for meetings and gatherings, for example, remain permitted as long as no goods or services are provided to the public. For other forms of temporary employment, a work and residence permit will in many cases be required due to the end of the free movement of workers.

B. Consequences for applicable law

If a Polish court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the amended Posting Workers Directive (PWD) and/or the Polish Act concerning the posting of workers in the framework of the provision of services to answer the question which legal system governs the employment contract. Working conditions of the country in which an employee habitually carries out their work may in principle continue to apply, also if the employee temporarily carries out work in the host country. However, the PWD and Polish Act guarantee that employees temporarily posted to Poland are at least entitled to the same specified Polish employment conditions (especially remuneration for work) for the first 12 months (in some situations – for 18 months). After this period all conditions of employment cannot be worse than conditions of employment prescribed in Polish regulations.

C. Consequences for social security

The general principle is that posted employees are subject to the social security legislation of the country where the work is carried out.

However, Poland has submitted notification to the European Commission on the continuation of the application of the principles of the coordination of social security systems provided for in the Regulation 883/2004/WE which is required by the Trade and Cooperation Agreement. Thus, a worker who is temporarily posted to another country by their employer continues to be subject to the social security legislation of the home country, provided that the posting does not exceed 24 months and the worker is not replacing another posted worker.

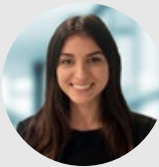


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1. BRITISH EMPLOYEE GOING FROM THE UK TO PORTUGAL | PERMANENT

A. Is a permit needed?

From 1 January 2021, UK employees will need a work visa permit in order to work in Portugal in a permanent position. To obtain the work visa British employees will need, among other documents, to present proof that the principle of priority has been observed.

The principle of priority when applying for an employment vacancy in Portugal consists of the duty of employers to advertise the vacancy on the respective official Portuguese website, then if within 30 days the vacancy has not been filled by an applicant resident in Portugal, the employer can then hire employees from the UK. The above mentioned proof will be issued by the competent Authority.

B. Consequences for applicable law

Due to Brexit, there are some formalities that will need to be observed within the employment relationships between employers and employees. UK citizens are no longer covered by any exceptions that are available to EU Member States. Since they are considered to be foreign workers under Portuguese Employment law, some mandatory requirements and references need to be added to their employment contracts (for example, reference to their work visa). The employer also has other additional responsibilities, for example keeping a record of the documents that demonstrate compliance with the work visa permit requirements in Portugal, as well informing the Authority for Working Conditions (ACT) in advance of the hiring of the employee.

C. Consequences for social security

There are some general rules applicable in all European countries due to the Trade and Cooperation Agreement between the EU and the UK. British employees who were living in Portugal before 31 December 2020 will not be affected and their status remains unchanged. Regarding employment relations after Brexit, the general rule is that employees will be subject to the social security laws of one country only, which is usually the country where the employment activities are performed.

2. BRITISH EMPLOYEE GOING FROM THE UK TO PORTUGAL | TEMPORARY

A. Is a permit needed?

The agreement between the EU and the UK stipulates some rules for temporary agreements regarding this cross-border relation. Portugal introduced the possibility of employees being exempt from the work visa requirement if they are to be carrying out paid work during a period of less than 90 days (for example seasonal work), but only in the case of a reciprocity arrangement in the UK for the same work type and conditions.

B. Consequences for applicable law

Portuguese Employment Law stipulates that in the case of an employee being sent to Portugal to carry out their employment functions on behalf of their employer, they will be entitled to Portuguese employment rights as if they were covered by a Portuguese employment contract. However, considering the principle of the most favourable treatment of an employee, Portuguese Employment Law will only apply where the working conditions are more favourable than those under the Employment Law of the employee's home country.

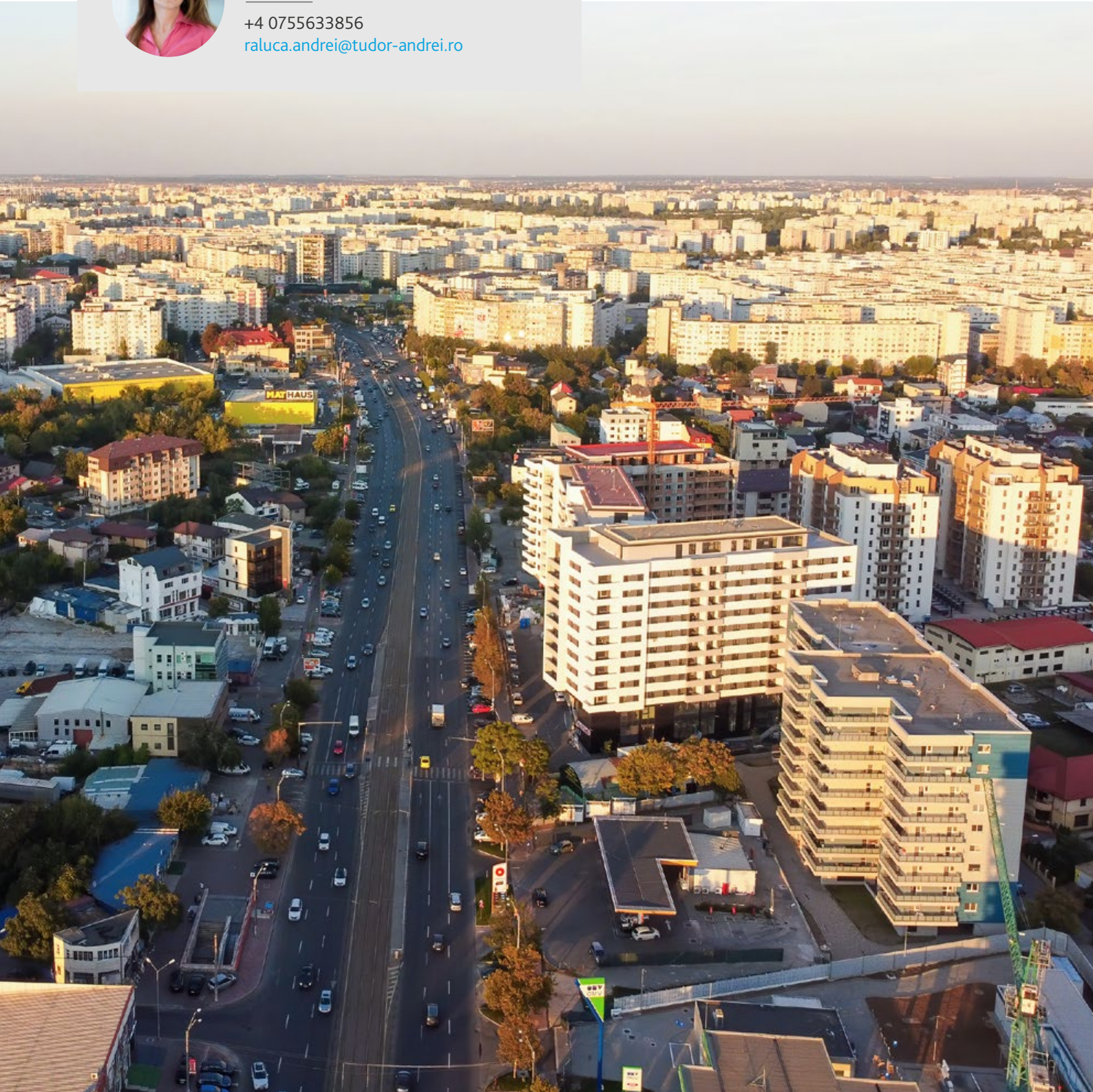
C. Consequences for social security

There are some general rules applicable in all European countries under the Trade and Cooperation agreement between the EU and the UK. A worker who is temporarily posted (for a period of no more than 24 months and not for the replacement of another posted worker) to another country by their employer continues to be subject to the social security legislation of their home country.

ROMANIA.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO ROMANIA | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a long-term working visa, work permit and residence permit are required to employ British workers in Romania.

British employees who were already employed by a Romanian employer and living in Romania before 1 January 2021 do not require a work permit. They do however have to apply for a new residence permit. This is possible until 31 December 2021.

B. Consequences for applicable law

In accordance with the Romanian Labour Code, an individual employment agreement between a foreign citizen and a Romanian employer is governed by Romanian law and the corresponding procedural rules apply.

Romanian law does not expressly prohibit the applicability of a foreign law for the individual employment agreement if so chosen by the parties, therefore British law may be chosen by the parties to govern the agreement. However, British law may be waived if its applicability would lead to any incompatibility with Romanian private international law.

In any case, since an individual employment agreement is entered into with a Romanian employer, the Romanian mandatory formalities must be observed, in terms of registration in the registry of employees, compulsory reporting etc.

C. Consequences for social security

The agreement between the EU and the UK also contains clauses on the coordination of social security. Much of this is in line with current EU legislation. Employees will be subject to the social security laws of one country only. Social security contributions will generally be paid in the country where the employee performs their work.

2. BRITISH EMPLOYEE GOING FROM THE UK TO ROMANIA | TEMPORARY

A. Is a permit needed?

British citizens can enter Romania without a visa and stay for a period of up to 90 days in any 180 day period for attending business meetings, sports or cultural events, short-term study or training or tourism purposes. For other forms of temporary employment, a long-term working visa, a work permit and a residence permit may be required.

The agreement between the EU and the UK also contains some clauses on the temporary employment of workers. For example, the EU and the UK have agreed that specific measures will be taken to facilitate intra-group secondments, for a maximum of 3 years (e.g. no limitations in the form of numerical quotas). In addition, short business trips of up to 90 days for meetings and gatherings, for example, remain permitted under certain circumstances with no visa requirement.

British citizens residing in Romania who wish to remain in the country after the end of the transition period may request an extension of their right to temporary residence in Romania, under the Withdrawal Agreement, to the Romanian immigration authorities up to 31 December 2021.

B. Consequences for applicable law

In accordance with Government Ordinance no. 25/2014, the posting of foreign employees shall be conducted in accordance with those Romanian provisions.

Romanian law does not expressly forbid the applicability of a foreign law of the parties' choice, so the parties may choose British law to govern their agreement. However, British law may be waived if its applicability would lead to any incompatibility with Romanian private

international law.

C. Consequences for social security

As of 1 January 2021, a Protocol on Social Security Coordination was agreed between the EU and UK providing that the individuals who move between the UK and EU are liable to pay social security contributions in only one country. This will usually be in the country where the work is undertaken.

As an exception to this main rule, the Protocol also covers posted workers and multi-state workers, aligning the existing rules with EU Regulations. However, EU Member States can choose not to apply the exemption for posted workers, in which case the UK employee would be subject to the social security legislation of the country where the work is undertaken.

As such, UK employees who are posted by their employer to work on a temporary basis in Romania may still be covered by their home country's social security system for up to 24 months, with no extension, if Romania chooses to not implement the main rule. In this regard, Romania should notify the EU of its intention. At the date when this publication was prepared, there was no indication of Romania's intention to not apply the posted worker exemption (and it would come as a surprise if they would choose to not apply it).

An application for a certificate of coverage should be made to the home country's social security authorities for any exception to the main rule.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO THE SLOVAK REPUBLIC | PERMANENT

A. Is a permit needed?

British employees starting work in Slovakia after 1 January 2021 shall be considered as third country nationals, which means they require a work and residence permit. An exception applies to British workers who were already employed in Slovakia before 1 January 2021. These workers may continue working in Slovakia without a work permit (they may even terminate their current employment and then enter into a new employment contract with a different employer without having to apply for a work permit), however they are obliged to apply for a residence permit.

B. Consequences for applicable law

Generally, relations arising out of an individual employment agreement shall be governed - unless the parties agree otherwise - by the law of the country where the employee is working. If the employee, however, works in one country under an employment agreement with an organisation which has its seat in another country, the law of the seat of the organisation shall apply, unless the employee has their residence in the country where they are working. The possibility to bring action against persons with a UK residence in Slovak courts will be governed by EU regulations after the end of the transitional period to the extent that jurisdiction can be established against persons domiciled in third countries under such regulations. In other cases, a Slovak court may establish jurisdiction over a person living in the UK only on the basis of Slovak law Act No. 97/1963 Coll. on International Private and Procedural Law. Slovak courts shall also have jurisdiction in matters relating to individual employment agreements if the action is brought by the employee having Slovak residence.

C. Consequences for social security

The agreement includes the coordination of social security systems and defines conditions for its full and partial protection. Generally, until 1 January 2021, all acquired social security rights and entitlements arising from EU coordination regulations shall be maintained in the areas of social security contributions, pension benefits, sickness benefits, accident benefits, unemployment benefits and family benefits. The rights and entitlements arising from the EU coordination regulations are maintained and continue to apply also after 1 January 2021 to persons who have been - and continue to be - in a cross-border (UK/SK) situation.

2. BRITISH EMPLOYEE GOING FROM THE UK TO THE SLOVAK REPUBLIC | TEMPORARY

A. Is a permit needed?

British employees posted from the UK to Slovakia to perform work after 1 January 2021 need to comply with conditions of the Slovak legislation applicable to third country nationals, which means that such employees will have to apply for a work and related residence permit. However, British workers posted to perform work in Slovakia with the commencement of the posting before 1 January 2021, who are resident in Slovakia and their posting is performed uninterrupted, may continue to be posted in Slovakia without the requirement to obtain a work permit.

B. Consequences for applicable law

The agreement does not regulate the rights of posted workers. Until the end of the transitional period, the free movement of workers from the UK within the territory of Slovakia is maintained under the Directive 96/71/EC, but the right to free movement of workers no longer applies to workers posted after 1 January 2021. Rather, in these cases, the Slovak Labour Code and Employment Services Act apply with the exception of intra-corporate transferees, such as managers, specialists, and trainee employees. Slovak legislation shall apply to posted workers at least in the areas of a) the length of the working time, rest periods and holidays, c) minimum wage, minimum wage claims and wage overtime rate, d) occupational health and safety, e) working conditions for women, adolescents and employees caring for child younger than three years of age, f) equal treatment and a prohibition of discrimination, g) working conditions for employees of a temporary employment agency. However, this shall not prevent against the implementation of employing principles and conditions more favourable for the employees.

C. Consequences for social security

The agreement also regulates the coordination of social security for temporary workers. Generally, a posted worker continues to be subject to the social security system in their home country, as long as the PD A1 document has been issued, which is valid for only 24 months.



SPAIN.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO SPAIN | PERMANENT

A. Is a permit needed?

As of 1 January 2021, a work and residence permit is required to employ British employees in Spain, for both permanent and temporary stays.

An exception applies to British employees who were already employed by a Spanish employer and living in Spain before 1 January 2021. They do not need a residence and work permit to continue rendering services in the country. However, they may request the issuance of an identity card acknowledging their status as holders of a residence permit. This is not mandatory; however it is recommended as a quick way to certify the legal status of British citizens in Spain.

B. Consequences for applicable law

If a Spanish court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Rome I Regulation. In principle, the employment contract is governed by the law chosen by the parties. However, this choice may not deprive an employee of the protection afforded to them by mandatory provisions under the law that would have been applicable to the contract without a choice of law (i.e. the objective applicable law). In most cases, this is the law of the country where the employee habitually performs their work.

C. Consequences for social security

The agreement between the EU and the UK also contains arrangements on the coordination of social security. Much of this is in line with current EU legislation. Employees will be subject to the social security laws of one country only. Social security contributions will generally be paid in the country where the employee performs their work.

2. BRITISH EMPLOYEE GOING FROM THE UK TO SPAIN | TEMPORARY

A. Is a permit needed?

As of 1 January 2021, a work and residence permit is required to employ British employees in Spain, for both permanent and temporary stays.

However, for short business trips of up to 90 days for meetings and gatherings, for example, remain permitted so long as no goods or services are provided to the public.

Intra-group secondments between companies also require the processing of a work and residence permit, in accordance with the specific foreigners' regulations for these cases.

Workers of companies established in the UK who have been posted to Spain prior to 31 December 2020 may, as from 1 January 2021, remain in Spain for the provision of such a service until the end of the intended duration of the posting which was reported to the relevant employment authority. For this purpose, it shall not be necessary to obtain a residence and work permit.

However, workers of companies established in the UK who, having started the posting before 31 December 2020, wish to extend the initially foreseen duration of the posting, will need to obtain a residence and work permit, without the requirement to obtain a visa. This authorisation will be requested by the company established in Spain in favour of the posted worker and the national employment situation will not apply.

B. Consequences for applicable law

If a Spanish court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the amended Posting Workers Directive (PWD) to answer the question which legal system governs the employment contract. Working conditions of the country in which an employee habitually carries out their work may in principle continue to apply, also if the employee temporarily carries out work in the host country. However, the PWD safeguards that employees temporarily posted to Spain are at least entitled to the specific minimum employment conditions that apply in Spain.

C. Consequences for social security

A worker who provides services in the UK for an employer who normally carries out business in the UK and who is temporarily posted to Spain by their employer continues to be subject to the social security legislation of the UK, provided that the posting does not exceed 24 months and that the worker is not replacing another posted worker. It should be noted that this is conditional on the granting of reciprocal treatment by the competent authorities in the UK.



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1. BRITISH EMPLOYEE GOING FROM THE UK TO SWITZERLAND | PERMANENT

A. Is a permit needed?

From 1 January 2021 UK nationals are no longer considered EU nationals and the residence regime in Switzerland will no longer be governed by the Agreement on the Free Movement of Persons (FMPA). The provisions of the Foreign Nationals and Integration Act (FNIA) will apply. It is the responsibility of the Swiss employer to provide evidence that no "national" could be recruited for the role in question, demonstrating to the Swiss authorities that the extensive search efforts have not been successful. Furthermore, only highly skilled workers can be admitted to the Swiss labour market and the employment must be in the overall economic interest of Switzerland. The employment and work conditions must be in compliance with the Swiss Posted Workers Directive.

An exception applies to British employees who were already employed by a Swiss employer and living in Switzerland prior to 1 January 2021 with already acquired Swiss work and residence rights remaining in force. The permit card does not have to be changed proactively unless the Swiss authority reaches out to the British national.

B. Consequences for applicable law

The so-called Rome I Regulation, which harmonises the rules governing the law applicable to contractual relationships including employment relationships, does not apply between Switzerland and the EU or its Member State, respectively. Thus, the UK and Switzerland answer the question of the applicable substantive laws autonomously in accordance with their respective international private law. This principle is unchanged with UK's exit from the EU. In the case of Switzerland, the rules of conflict of laws are laid down in the Swiss Federal Act on Private International Law (PILA). According to Article 121 para. 1 PILA, employment contracts are governed by the law of the country in which the employee habitually carries out their work (e.g. Switzerland). In limited boundaries, the parties can choose a different law for their contract.

However, it must be pointed out that the places of jurisdiction between the EU and Switzerland are governed by the so-called Lugano Convention. With the UK's exit from the EU, this treaty is no longer valid between Switzerland and the UK. Consequently, different places of jurisdiction could apply to employment disputes. This could also result in a different substantive applicable law since it is determined by the courts of the place of jurisdiction in accordance with the international private law of the respective country. The UK will most likely re-join the Lugano Convention in the near future.

C. Consequences for social security

From 1 January 2021 the Social Security Agreement between Switzerland and the UK of 1968 is valid once again. If the employee works under a local contract in Switzerland and performs their work only physically in Switzerland, they should be subject to Swiss Social Security. However, the 1968 agreement only covers the situation in which the employee works in one of the countries. If the employee works in Switzerland and the UK, split contributions would be due in both the UK and Switzerland according to the work carried out.

2. BRITISH EMPLOYEE GOING FROM THE UK TO SWITZERLAND | TEMPORARY

A. Is a permit needed?

The Swiss and UK governments agreed on a bilateral agreement on the mobility of self-employed and posted service providers. Short-term assignments for up to 90 days per calendar year remain permitted and no prior employment market assessment is required. An online registration must be completed at least eight days before the start of the assignment in Switzerland. The agreement has initially been limited to two years.

In the event that the assignment exceeds 90 days, a request for permit must be filed with the competent employment authority before the 90 days have passed. The admission requirements of the Federal Act on Foreign Nationals and Integration (FNIA) apply and there is no legal claim to an extension. An extension is possible, but a permit is required.

B. Consequences for applicable law

The principles of applicable law described above for permanent positions are also valid for employees going from the UK to Switzerland on a temporary basis.

C. Consequences for social security

From 1 January 2021 the Social Security Agreement between Switzerland and the UK of 1968 is valid once again. If the employee is assigned to Switzerland and performs their work only physically in Switzerland, they should be subject to the home social security according to the agreement. A respective confirmation from the competent Social Security Authority should be requested. As the 1968 agreement only covers the situation in which the employee works in one of the countries during the assignment, the employee should be subject to split contributions between Switzerland and the UK according to the work carried out.



UK.



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Prepared in collaboration with



1. EUROPEAN EMPLOYEE GOING FROM EUROPE TO THE UK | PERMANENT

A. Is a permit needed?

As of 1 January 2021, European Economic Area and Swiss ("EEA") employees who do not have an alternative legal basis to live and work in the UK will require a work visa to do so. The most common types of visas are Skilled Worker or Intra-company Transfer visas, which require the individual to be sponsored by a UK employer which holds a sponsor licence issued by the Home Office. Only skilled roles that meet prescribed minimum skills and salary thresholds are capable of sponsorship. Additionally, the individual must meet certain financial requirements and satisfy English language requirements (unless they are coming under an Intra-company Transfer visa).

EEA nationals who were already resident in the UK as at 31 December 2020 may be eligible to apply for residence status under the EU Settlement Scheme before 30 June 2021, which, if granted, permits employment without the need for a work visa.

B. Consequences for applicable law

If a UK court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply the Rome I Regulation. Following the UK's departure from the EU, Rome I has been converted into UK law (UK Rome I). From 1 January 2021 UK courts will continue to apply Rome I in respect of contracts entered into before this date and will apply UK Rome I in respect of contracts entered into after this date. In principle, the employment contract is governed by the law prescribed in the contract. However, this choice may not deprive an employee of the protection afforded to him by mandatory rules of the forum or of the law that would have been applicable to the contract without a choice of law. In most cases this is the law of the country where the employee habitually performs their work.

C. Consequences for social security

Employees will be subject to the social security laws of one country only. Social security contributions will generally be paid in the country where the employee performs their work. In this case as the move is permanent, the employer and employee social security liability will switch to the host country, i.e. the UK.

2. EUROPEAN EMPLOYEE GOING FROM EUROPE TO THE UK | TEMPORARY

A. Is a permit needed?

The agreement between the UK and the EU provides for visa-free travel for short-term visits. The UK's short-term visitor rules allow for visits for specified business activities for up to 6 months. Permitted activities include attending meetings, conferences and interviews, negotiating and signing deals and contracts and being briefed on the requirements of UK based customers, provided that any work for the customer is done outside the UK. There are also specific provisions for intra-corporate activities. However, no substantive work is permitted under this route, as this would require a sponsored or alternative work-based visa.

The UK has confirmed that EEA nationals will be considered to be "non-visa" nationals from 1 January 2021, which means that there will be no requirement on them to apply for a visit visa before travelling to the UK.

B. Consequences for applicable law

As above, if a UK court is competent to hear a dispute of a cross-border nature between an employer and an employee, the court must apply Rome I (or the UK Rome 1 in respect of contracts entered into from 1 January 2021). In principle, the employment contract is governed by the law prescribed in the contract, however an employee may argue that he is afforded the protection of the law that would have been applicable to the contract without a choice of law. In most cases this is the law of the country where the employee habitually performs their work. A temporary visitor is unlikely to be 'habitually performing work in the UK' and is therefore unlikely to be afforded the protection of any UK employment rights. The Posted Workers Directive (PWD) which is relevant to temporary postings of workers in the EU has not been implemented in the UK.

C. Consequences for social security

A worker who is temporarily posted to another country by their employer continues to be subject to the social security legislation of the home country, provided that the posting does not exceed 24 months and the worker is not replacing another posted worker. Therefore postings of no more than 24 months will remain in the social security legislation of the EU home country. A detached worker A1 should be applied for from the home country authorities to exempt the individual from UK social security. Under the new Protocol no extensions can be requested beyond the 2 year period. Temporary assignments intended to be longer than 24 months will switch to UK social security legislation from day 1.



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BDO GLOBAL STATISTICS 2020

GLOBAL REVENUES


US\$ **10.3**
BILLION
+7.8% of increase

TOTAL HEADCOUNT


91,054
PEOPLE
+3.3% of increase

GLOBAL FOOTPRINT

 **167** COUNTRIES
 **1,658** OFFICES



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