Brexit: Key outcomes sought by German employers (BDA)
February 2018

Thematic area: Free movement of workers and social insurance

Issue	Description of problem	Outcome sought by BDA / need for action
Free movement of workers / immigration	Since the United Kingdom seeks to leave the single market, there will no longer be free movement of workers between the United Kingdom and EU-27 after the withdrawal date. The status and rights of EU citizens living in the United Kingdom therefore need to be regulated in order to establish legal certainty for both companies and employees. British citizens who want to take up employment in the EU after the withdrawal date will be treated like third-country nationals. However, by contrast with EU-27 workers, British workers would have access to the European labour market via the directive on intra-corporate transfers (ICT) as well as via the EU Blue Card directive. Conversely, the employment of EU-27 nationals in the United Kingdom will be oriented exclusively on national British law.	The agreements reached in the area of citizens' rights during the first stage of the negotiations broadly go in the right direction and must be made legally binding as rapidly as possible. Applications to acquire "settled status" by EU citizens who have been in the United Kingdom for longer than five years and "temporary status" by EU citizens who have been in the United Kingdom for less than five years should keep red tape to a minimum and be processed rapidly. This also applies for implementation of the corresponding rules for British citizens who are living in EU-27 Member States at the time of Brexit. The necessary legislative provisions have to go through both national and European parliamentary procedures and should be set in train rapidly. Agreements must be made in a treaty on future relations between the United Kingdom and the EU specifying the conditions under which British citizens should have access to the European labour market and, conversely, EU citizens should have access to the British labour market. It must be ensured that entry into the British and the EU-27 labour market is not complicated by bureaucratic and burdensome legal requirements on the EU-27 and/or British side. At the very least, the aim should be a reciprocal solution between the United Kingdom and the EU which resembles the EU directives on migration of third-country nationals. In particular, the rules agreed in the ICT and Blue Card directives should be part of this solution, which must apply for British citizens in the EU and EU citizens in the United Kingdom alike. The rules should be agreed at EU level. Bilateral agreements alone would not be the right route. Rules must also be agreed for less skilled workers who fall outside the scope of the ICT

		and Blue Card directives with the aim of enabling migration into the British labour market and into EU-27 labour markets – taking the division of competences between EU and national level into consideration.
Coordination of social protection systems	With the ending of the United Kingdom's EU membership, all links arising from European coordinating social legislation will cease to be applicable. If no future arrangements between the United Kingdom and the EU are agreed, this could lead to both social protection systems becoming applicable for migrant workers / expats. This in turn could lead to double insurance with enormous costs and hence impede worker mobility. Without new arrangements, the outdated 1960 German-British social insurance convention would once more come into play.	The withdrawal treaty and agreement on future relations must regulate how entitlements to benefits, benefit payments, etc., acquired by workers and in particular by migrant workers should be dealt with. If only bilateral agreements between the United Kingdom and each individual EU Member State were to be concluded or revived in this area, this would lead to more effort and costs for companies. German employers call for a solution for coordination of social protection systems which is as close as possible to the status quo. Crediting and export of all benefits covered by regulation 883/2004 must continue to be possible. For German companies, it is essential that employees posted to the United Kingdom continue to be able to remain in the German social insurance system without problems also in the future, and are exempt from social insurance contributions in the host country. If no solution is found and there is a return to the exclusively bilateral rules of the 1960 German-British social insurance convention, the consequences would be problematic. According to the social insurance convention, the period for a posting is limited to 12 months and is therefore 12 months shorter than the current rules under regulation 883/2004. In addition, so-called "multi-state workers" who are covered via article 13 of regulation 883/2004 are not covered by the social insurance convention. Moreover, application of the German-British social insurance convention would involve a very high administrative effort. Questions of interpretation on detailed issues would have to be agreed with the British side.

Thematic area: Labour law

Issue	Description of problem	Outcome sought by BDA / need for action
Establishment of businesses	In line with the principle of freedom of establishment, businesses within the EU can choose the national company law under which they wish to incorporate. Many European businesses have chosen different corporate forms under British law ("Ltd", "PLC"). It is estimated that there were almost 9,000 British limited companies ("Ltd") registered in Germany in 2016. Following its departure, the United Kingdom will be a third country. The German Federal Court of Justice's "racecourse ruling" will become applicable for businesses incorporated under British law. This ruling states that foreign companies have to be converted into partnerships under German law. This removes the limitation on liability. For example, a German partner will in future bear full personal liability for his "Ltd".	If no corresponding rules are agreed in the withdrawal treaty or in the agreement on future relations, British corporate forms would no longer be recognised in Germany, since the basis for recognition, freedom of establishment, will disappear. The same applies for EU-27 corporate forms in the United Kingdom. Even if freedom of establishment will disappear after the United Kingdom's withdrawal, German employers are working for both companies established under British company law in EU-27 and companies established in the UK under EU-27 company law at the time of withdrawal to be able to retain their legal form also in the future. Mutual protection of existing configurations is indispensable to safeguard business continuity.
Posting of workers and provision of services	With the disappearance of freedom to provide services following the United Kingdom's departure from the EU, posting of workers for the provision of services will be rendered much more difficult. When a posting is organised, the United Kingdom will be regarded virtually as a third country following Brexit.	EU and United Kingdom should reach an understanding in an agreement on future relations that postings of workers for the provision of services can continue with the least possible effort.
European works councils	Numerous international companies whose seat is outside the EU have chosen British law for their European works council (EWC). Since the	German subsidiaries of third-country undertakings should consider whether it makes sense for them to work for their EWC to pursue its activities under German law.

	United Kingdom will in future be a third country, these companies must move their EWC into one of the remaining 27 EU Member States following Brexit. In the case of an EWC established under German law and in which employees from the United Kingdom are represented, these British employees will no longer be entitled to take part in the EWC's work following Brexit.	Companies with an EWC governed by German law and British EWC members must explore whether the British employees should continue to serve in the EWC following Brexit. This makes sense first and foremost if there are also representatives from other third countries who participate in the EWC, e.g. as observers. The British employee representatives could then be given the same status as the other third-country representatives. If this objective were to be pursued, the EWC agreement would have to be adapted if necessary.
Employee data	A smooth transfer of employee data from and into the United Kingdom will continue to be essential also in the future. Even if the United Kingdom plans to keep all EU regulations in British law in the first instance (including the general data protection regulation), the United Kingdom will still become a "third country" following Brexit for the purpose of data protection law. The United Kingdom would no longer be included in the scope of EU data protection law and would be classified as a third country for the time being.	Immediately on the United Kingdom's withdrawal from the EU, the European Commission should establish an "appropriate level of data protection" for the United Kingdom so that data exchange does not come to a standstill. Data transfer is indispensable, inter alia for calculating pay statistics for employees abroad.

Thematic area: Education and vocational training

Issue	**Description of problem**	**Outcome sought by BDA / need for action**
Mobility of students, trainees and schoolchildren (collectively:	Students from EU-27 will in future be classified in the United Kingdom as "international students", which would be associated with a marked increase (a doubling) of course fees and the need for a visa.	Student mobility must continue to be encouraged as much as possible also after the United Kingdom withdraws from the EU. It should therefore be agreed in the withdrawal treaty or in the agreement on future relations that the United Kingdom will

"students")	For all academic diplomas acquired in the United Kingdom, an identification of the awarding university would be obligatory within the EU unless Great Britain joins EEA. Participation in Erasmus programmes could become impossible for British students and trainees. In addition, the United Kingdom would disappear as a very popular Erasmus country for EU-27 students.	continue to be a member of the Erasmus+ programme, as is the case for Member States of the European Economic Area. In addition, the United Kingdom should refrain from classifying EU-27 students not studying via Erasmus as "international students" for as long as possible.
Recognition of educational diplomas generally as well as in regulated professions	There has been mutual recognition of educational diplomas within the EU since 2005, on the basis of the directive on recognition of professional qualifications. The binding effect of this directive would cease to apply after 29 March 2019. Among the regulated professions, it is particularly professions in the health sector (doctors, care workers), lawyers, architects and engineers who would be affected.	Educational diplomas and diplomas in regulated professions awarded prior to the withdrawal date must continue to be recognised in the future. The withdrawal treaty or the agreement on future relations must regulate the extent to which study results and educational diplomas are mutually recognised in the future. This also applies for school certificates which are acquired in the framework of foreign stays in the United Kingdom. The United Kingdom's Bologna membership is independent of EU membership and should be continued.

Contact:

BDA | DIE ARBEITGEBER
Confederation of German
Employers' Associations

European Union and International Affairs
Tel +49 30 2033-1900
europa@arbeitgeber.de

EU Transparency register no 7749519702-29