

Requirements for British nationals working in the EEA from 1 January 2021- Q & As

Our webinar on 10 December 2020 generated a wide-ranging set of questions from attendees, which we have collated and answered below.

In these Q&As, unless otherwise indicated, the term 'EEA national' means nationals of countries included in the European Economic Area, as well as Swiss nationals. It excludes Irish nationals, who are already considered 'settled' in the UK.

Please also see Lus Laboris' useful [Brexit guide for international employers](#) which explores key aspects of post-Brexit mobility across EU jurisdictions. If you have any queries or issues you are currently dealing with, please do contact one of the Lus Laboris partners below or your usual Lewis Silkin contact and we'd be happy to help:

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Question	Answer
<p>1. We have an employee who is a Dutch national, that travels to work in the UK once a month for 4-5 days, please advise whether they will need to a visa post Brexit?</p>	<p>If they have been working in the UK prior to 11pm 31 December 2020, they may have the option of either settled, pre-settled status or a frontier worker permit. If not, then they will require a work visa to work in the UK going forward, likely the Skilled Worker visa. You could also look at restricting their activities on their trips to only those permitted as a visitor.</p>
<p>2. If a British poster worker relocates pre-31 Dec, but their assignment doesn't start until 2 Jan, would they still fall under Withdrawal Agreement?</p>	<p>In general, Posted Workers even if their assignment starts before 31 December 2020 are NOT covered by the Withdrawal Agreement.</p> <p>BELGIUM: Posted Workers assigned to Belgium after 1 January 2020 will in any event require a single permit to work and reside in Belgium. Although not covered by the Withdrawal Agreement, posted workers whose assignment started before 31 December 2020 and who have Belgian residence status (E-card) before 31 December, will according to the Belgian Immigration authorities nonetheless be considered as beneficiaries of the Withdrawal Agreement.</p> <p>ITALY: Starting from January 1st 2021 a UK posted worker may work in Italy only if he complies with immigration requirements set out for non-EU nationals. This regardless of whether he entered the company</p>

	<p>before 31 December 2021. In this case, the UK worker may be able to apply for a work VISA not subject to quotas.</p>
<p>3. My understanding is that the Schengen visa waiver will only benefit UK nationals for non-working visits. If they are working, they will need a visa - and what work is for these purposes will depend on each country's rules. Is that right?</p>	<p>Yes, the Schengen visa waiver allows the employee 'to be' in the Schengen area ('stay'). Whether an additional work authorisation is needed to also 'work' in the relevant Schengen country must be checked according to the rules of that country. This also includes business trips as in some countries the type of activities that can be performed without additional work authorisation are limited and/or there might also be limits in time.</p> <p>BELGIUM: An exemption for a work permit applies for 'meetings in closed circle' (= meetings with clients, internal strategic discussions, ...) provided that they do not exceed 20 days per meeting and 60 days per year in total (same rule applies in Sweden).</p> <p>ITALY: correct – A Schengen visa waiver would cover business visits (i.e. meetings, negotiations etc) though</p>
<p>4. Does the 90 days include personal trips or is it just business trips?</p>	<p>The 90 days include <u>all days</u> in the Schengen area in any rolling 180-days period whether for personal reasons or business ('stays').</p> <p>BELGIUM: As above.</p> <p>ITALY: The limit of 90 days within a period of 180 days also includes trips for personal purposes.</p>
<p>5. What will be the impact/penalty of accidentally overstaying 90 days within 180-day period?</p>	<p>This should be checked in the relevant Schengen country as each Schengen country applies its own penalties. Overstaying, intentionally or unintentional may lead to e.g. a fine, immediate deportation or getting banned from entering the Schengen area for a specific amount of time.</p> <p>BELGIUM: In case of overstaying, the employee will be considered as illegal in the country and may be deported and get banned from re-entering Belgium for a certain period of time (up to 10 years).</p>

	<p>ITALY: The risk is to be expelled from the Italian territory or be subject to an economic sanction given that after 90 days without a visa, UK citizens (like other foreign citizens) will be considered illegal immigrants.</p>
<p>6. We have UK lawyers practising law in Paris. How are other law firms making this work? Thanks</p>	<p>This should be checked according to French law.</p>
<p>7. Could you confirm that the Schengen visa is not made for work but business visit (conference, meetings, etc.)?</p>	<p>The Schengen visa waiver allows the employee <i>'to be'</i> in the Schengen area (<i>'stay'</i>). Whether an additional work authorisation is needed to also <i>'work'</i> (i.e. be there for work reasons) in the relevant Schengen country must be checked according to the rules of that country. This also includes business trips as in some countries the activities that can be performed without work authorisation are limited and/or there might also be limits in time.</p> <p>BELGIUM: In principle a work permit is needed for a third-country national to be active on Belgian territory for professional reasons, unless an exemption applies.</p> <p>An exemption for a work permit applies e.g. for conferences without time limit and for <i>'meetings in closed circle'</i> (i.e. meeting with clients, internal strategic discussions etc) provided that the meetings do not exceed 20 days per meeting and 60 days per year in total. There are also some other exemptions, usually very limited in time.</p> <p>ITALY: I confirm that Schengen visa, as interpreted in Italy, covers only business and commercial purposes such as conferences or meetings and not work. Consequently, an employment visa (within or outside the quotas depending from the activities) is required for work.</p>
<p>8. What about recognition of UK professional qualifications? Will they recognised as status quo - if they were recognised earlier pre 1st Jan 2021? An example could be considering a technical project where a UK national needs to provide some technical services on-site say in Germany and needs to be technically qualified to do that work.</p>	<p>The Withdrawal Agreement foresees that recognition obtained before the end of the transition period in accordance with the Directives listed in the Withdrawal Agreement, will maintain its effects in the relevant Member State.</p> <p>BELGIUM: Withdrawal agreement applies.</p> <p>ITALY: At this stage there is no evidence of a possible agreement between the UK and EU on the recognition of professional qualifications. As a consequence, as of the withdrawal date, UK nationals will be third country nationals and European law on recognition of professional qualifications no longer applies to</p>

	<p>them starting from January 1st 2021. With reference to professionals recognised before January 1st 2021, the withdrawal of the UK does not affect any decisions on the recognition of professional qualifications obtained before the withdrawal date. Here you can find some additional information: https://ec.europa.eu/info/sites/info/files/file_import/professional_qualifications_en.pdf</p> <p>A deeper analysis after Brexit date could be recommended for each type of professional qualifications.</p>
<p>9. We have posted workers, working in the EU however they return to the UK on weekends. They will be back in the UK for Christmas. Can they return in the new year under the Withdrawal Agreement or do they physically need to be in the EU country on the 31st Dec?</p>	<p>Beneficiaries of the Withdrawal Agreement must lawfully reside in the EU before 31 December 2020) and continue to do so thereafter. The fact that they are not physically present in the relevant Member State on 31 December 2020 is not relevant if they are lawfully residing in that Member State and continue to do so after 31 December 2020.</p> <p>However, more importantly, it should be checked in the relevant Member State <u>if the posted employee (even if lawfully residing in the Member State before 31 December 2020) will be considered by the Member State as a beneficiary</u>. Posted workers are NOT covered by the Withdrawal Agreement. However, the relevant Member States <u>may</u> decide to nonetheless consider them as beneficiaries, but this should be checked according to the rules of the relevant Member State. <u>If not</u>, the UK national will be considered as a third country national (non-EU) and may need the relevant work and residence permit.</p> <p>BELGIUM: According to the Belgian Immigration Office they will not make the distinction between UK posted employees and UK employees in service of a Belgian company as long as the employees lawfully reside in Belgium before 31 December 2020. To prove such residency, it is of utmost importance that the employees have their European residence cards (E(+)-card) or have applied for it (with complete file) before 31 December 2020. They will then need to exchange their European cards for a card as beneficiary of the Withdrawal Agreement (M-card) by 31 December 2021.</p> <p>ITALY: Starting from 1 January 2021, UK workers may work in Italy provided they obtain a work VISA. This regardless of whether they are already in Italy or they need to re-enter the country after Christmas.</p> <p>As of today, there is no indication that exceptions would be made for posted workers</p>
<p>10. Would this apply to one - two-day meetings / conferences, etc. where British nationals fly over to EU to meet with clients? Or would the Schengen visa be OK?</p>	<p>The Schengen visa waiver allows the employee 'to be' in the Schengen area ('stay'). Whether an additional work authorisation is needed to also 'work' (i.e. be there for work reasons) in the relevant Schengen country must be checked according to the rules of that country. This also includes business trips as in</p>

	<p>some countries the activities that can be performed without work authorisation are limited and/or there might also be limits in time.</p> <p>BELGIUM: This would ok. No time limited applies for conferences but for 'meetings in closed circle' a time limit of maximum 20 days per meetings and 60 days per year in total applies.</p> <p>Italy: In this case a Schengen visa should be ok and UK citizens are actually exempted from requesting it.</p>
<p>11. We have Brits currently working in Belgium in our Belgium entity. I assume they should be ok for the Van der Elst exemption but is there anything to do in that regard?</p>	<p>If they are <u>employed by the Belgian entity</u> (i.e. employment contract with the Belgian entity) and reside in Belgium before 31 December 2020, this is ok.</p> <p>If they are employed by the UK entity and posted to Belgium, they are not covered by the Withdrawal Agreement. However, the Belgian Immigration Office has taken the view not to make the distinction between posted employees and employees in service of a Belgian company as long as the employees lawfully reside in Belgium before 31 December 2020. To prove such residency, it is of utmost importance that the employees have their European residence cards (E(+)-card) or have applied for it (with complete file) before 31 December 2020. They will then need to exchange their European cards for a card as beneficiary of the Withdrawal Agreement (M-card) by 31 December 2021.</p> <p>Note: for the Van der Elst exemption to apply, the employee should be in service of an employer established in the EEA or Switzerland.</p>
<p>12. With regards to UK artists (models, directors, stylists or musicians) I am assuming from what has been said across the board that these activities would not count toward most general business activities if they are working on set on a shoot or doing a performance?</p>	<p>This should be checked according to the rules of the relevant country where the activities are performed and whether additional authorisation is needed.</p> <p>BELGIUM: Artists with <u>international fame</u> are exempt from a work permit provided that their stay in Belgium for these activities do not exceed 21 days per quarter.</p> <p>Italy: Depending on the specific facts, it is likely that this kind of activity would be considered work activity so a work VISA would be required. Artists may get a work visa outside quotas, but it is necessary to check depending on the activity to be carried out.</p>

<p>13. Does productive performances in this latter slide include coming into the country to do consultancy work for a Belgian client?</p>	<p>Genuine consultancy work is not covered by the exemption for 'meetings in closed circle'. 'Meetings in closed circle' refer to <i>meetings/discussions</i> with clients, preparatory meetings, fact finding, etc.</p>
<p>14. Question for Switzerland, can UK nationals have business visits (internal, with clients) without needing a work permit, similar to the situation outlined for Belgium?</p>	<p>SWITZERLAND: Work without a work permit is tolerated for 8 days within a calendar year (8 days per EU company - and this principle should also be applicable to UK companies after Brexit in view the fact that the online notification model should remain applicable). In cases where the internal meetings or client meetings are usually to be considered as gainful employment, a work permit or the online notification will become mandatory. Business visits are for the purpose of sales, contract negotiations, participation at conferences and group internal meetings for strategic discussions or any activities which are not billable, nevertheless, the distinction will always be a grey area</p>
<p>15. Do independent consultants (Directors of their own limited companies) fall into exceptions for work permits in the different countries within EU or can they come in and provide consulting services to clients in those different countries under the Schengen 90 days?</p>	<p>This should be checked according to the rules of the relevant country where the activities are performed.</p> <p>BELGIUM: As of 1 January 2021, a professional card will be needed to provide consultancy services as an independent worker. An exemption applies for business meetings (maximum 3 months) but allowed activities are limited (meetings, negotiations, conferences, etc).</p> <p>ITALY: As a general rule, that type of trip does not fall within the Schengen business VISA waiver so the independent consultants would generally need to obtain a work VISA. Specific circumstances would help assessing possible alternatives and risks</p>
<p>16. Are there any implications for UK based individuals doing consulting work for a EU client for social security even if they are not physically in that country for all their time working for that client? Would that be the same for a EU employee working for a EU organisation but living in the UK with their work being done remotely?</p>	<p>As of 1 January 2020, the European social security rules no longer apply. However, transition rules (grandfathering rights) apply for cross-border situations which exist on 31 December 2020 and continue to exist afterwards. For new situations, in the absence of an Agreement between the UK and the EU, it should be checked if a social security treaty between the UK and the relevant member state exists. In the absence thereof, each country will apply its own national rules.</p> <p>BELGIUM: No implications as of 1 January 2021 (unless a new Agreement would be concluded between the UK and the EU or between the UK and Belgium). Based on national rules, Belgian social security only applies if 1) the employee works on Belgian territory and 2) in service of a Belgian company or a Belgian seat of a foreign company.</p> <p>Question regarding EU employee working remotely in the UK to be assessed according to UK law.</p>

	<p>Italy: If the individual always works from the UK, the Italian social security authority would not have grounds to claim payment of social security in Italy. If instead the individual spends part of their time to Italy, after 1 January 2021 there may be such a risk.</p>
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