

## **INFORMATION ABOUT POSTINGS (A1)**

### **ABOUT ABV**

ABV is the umbrella organisation of the German pension schemes for liberal professions who are organised in professional chambers such as physicians, pharmacists, architects, notaries, lawyers, tax consultants, veterinaries, chartered accountants, dentists and psychological psychotherapists ('berufsständische Versorgungseinrichtungen', hereinafter called 'Versorgungswerke', see also [English Summary](#)).

Furthermore, ABV performs the function of a 'liaison body' pursuant to Article 1(2)(b) of Regulation (EC) No 987/2009 for the area of the German 'Versorgungswerke'. Its tasks include in particular the coordination of administrative assistance and data exchange for the 'Versorgungswerke' in cross-border situations and giving education, counselling and information in this field.

In addition and specifically, ABV is competent authority for delivering A1 documents stating the continued applicability of German social security law for members of 'Versorgungswerke' who are temporarily posted to another member state and who are a member of a private – thus, not statutory – health insurance fund.

Below, you will find further information about postings and pursuit of activities in two or more Member States. If you have any more questions, please do not hesitate to [contact us!](#)

**CURRENT NOTE: DELAY IN PROCESSING A1 CERTIFICATES DUE TO CORONA PANDEMIC**

Due to the current COVID 19 pandemic, there are operational delays in the processing of A1 applications. This concerns in particular the applications of self-employed persons, which have to be submitted manually in paper form.

We like to point out that, to our knowledge and experience, in all Member States proof of application is sufficient if no certificate could be issued before the start of the foreign activity. Thus, it is also in line with the established case law of the European Court of Justice that an A1 certificate can be issued retrospectively (ECJ, judgement of 6 September 2018 - C-527/16).

Against this background, we recommend that you keep a copy of your A1 application with you during your stay abroad.

Moreover, we strongly recommend that, in view of the current pandemic situation, business trips which are not absolutely necessary should be avoided.

For more information on the impact of the COVID 19 pandemic on applicable social security law (e.g. home office), see the [DVKA circular of 17 March 2020](#).

## **POSTINGS (A1)**

### **ABOUT POSTING**

A posting occurs when an employed or self-employed person temporarily works in a country (country of employment) other than the country (country of posting) in which he/she is normally employed.

If you are travelling on business for a short period, please note the information provided by the German Federal Ministry of Labour and Social Affairs (BMAS) on the "Handling of the A 1 certificate for short-term and short-term activities in other EU countries, the EEA countries Iceland, Liechtenstein and Norway as well as Switzerland", which you can find at the following link:

[https://www.bmas.de/SharedDocs/Downloads/EN/Theme-International/handling-certificate-a1.pdf;jsessionid=CC8C171506FF4349E3963EF98BB8DADA?\\_\\_blob=publicationFile&v=1](https://www.bmas.de/SharedDocs/Downloads/EN/Theme-International/handling-certificate-a1.pdf;jsessionid=CC8C171506FF4349E3963EF98BB8DADA?__blob=publicationFile&v=1).

A short summary can also be found below under "Current information - Short-term and short-term secondments".

Postings within the European Economic Area (EEA) and postings to Switzerland are governed by European coordination law, which is laid down in Regulations (EC) Nos 883/2004 and 987/2009; the central provision here is Article 12 of Regulation (EC) No 883/2004.

However, there is no relevant legislation on the posting of members of a 'Versorgungswerk' to other third countries, since the 'Versorgungswerke' are not covered by the social security agreements concluded between the Federal Republic of Germany and other countries.

### **PURSUIT OF ACTIVITIES IN TWO OR MORE MEMBER STATES**

Postings must be distinguished from pursuit of activities in two or more Member States. This is normally the case if, over the next 12 months, the person concerned is expected to work regularly for at least one day a month or at least five days a quarter in the Federal Republic of Germany and in another Member State. The central legal provision here is Article 13 of Regulation (EC) No 882/2004.

## **APPLICABLE LAW**

A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person, Article 12(1) of Regulation (EC) No 883/2004.

A person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed twenty-four months., Article 12(2) of Regulation (EC) No 883/2004.

## **COMPETENT AUTHORITIES**

According to § 3 SozSichEUG, the ABV is responsible for issuing A1 certificates for the continued applicability of German social security legislation in the case of

- postings to EEA state or Switzerland of
- members of ‘Versorgungswerke’ (German pension schemes for liberal professions who are organised in professional chambers, [click here for an overview](#))
- who are not covered by statutory health insurance.

Members of ‘Versorgungswerke’ with statutory health insurance submit their A1 application to the statutory health insurance fund responsible for them.

Freelancers not covered by statutory health insurance who are not members of a ‘Versorgungswerk’ ([see overview here](#)) submit their A1 application to the competent statutory pension scheme ([‘Deutsche Rentenversicherung’](#)).

If the activity in question is not a posting but pursuit of activities in two or more Member States, the competent body is the DVKA (‘Deutsche Verbindungsstelle Krankenversicherung – Ausland’). Further information and application forms are available at: <https://www.dvka.de>.

The following matrix gives you a summary overview of the responsibilities for A1 applications:

Type of activity	health insured	Member of a ,Versorgungswerk‘	Others
Posting	private	ABV	Statutory pension scheme (Deutsche Rentenversicherung)
	statutory	Statutory Health Insurance Fund (Krankenkasse)	
Pursuit of activities in two or more Member States*	privat	DVKA	
	statutory		

\* Regular activity in another Member State on one day a month or at least five days a quarter.

## APPLICATION PROCEDURE

Self-employed persons must submit a written application for an A1 certificate confirming the validity of German social security legislation to: ABV, Postfach 080254, 10002 Berlin; in urgent cases, the application can also be sent by fax to +49 30 800 93 10 29. For reasons of data protection, we ask you to refrain from submitting your application by unencrypted e-mail.

For dependent employees, the A1 application must be submitted electronically in accordance with § 106 SGB IV in conjunction with the Common Principles for the Electronic Application and Certification Procedure A1 in accordance with § 106 SGB IV. Electronic submission is also possible via SV-Net: <https://standard.gkvnet-ag.de/svnet/>. Further information is available here: <https://www.gkv-datenaustausch.de/arbeitgeber/entsendung/entsendung.jsp>.

## APPLICATION FORMS

The A1 application forms for postings and for pursuit of activities in two or more Member States can be found at:

[https://www.dvka.de/de/arbeitgeber\\_arbeitnehmer/antraege\\_finden/antraege\\_finden.html](https://www.dvka.de/de/arbeitgeber_arbeitnehmer/antraege_finden/antraege_finden.html).

## **CURRENT INFORMATION**

### **SHORT-TERM POSTINGS**

Since the beginning of the year, many applications have been made for A1 certificates for short-term postings, especially business trips. This means considerable additional bureaucratic work for employers, employees and self-employed persons as well as for the responsible authorities.

The German Federal Ministry of Labour and Social Affairs (BMAS) has therefore published notes on the "Handling of the A 1 certificate for short-term activities in other EU countries, the EEA states Iceland, Liechtenstein and Norway as well as Switzerland", which you can view at the following link:

[https://www.bmas.de/SharedDocs/Downloads/DE/Thema-Internationales/handhabung-bescheinigung-a1.pdf;jsessionid=CC8C171506FF4349E3963EF98BB8DADA?\\_blob=publicationFile&v=1](https://www.bmas.de/SharedDocs/Downloads/DE/Thema-Internationales/handhabung-bescheinigung-a1.pdf;jsessionid=CC8C171506FF4349E3963EF98BB8DADA?_blob=publicationFile&v=1).

It should be emphasised that the BMAS draws attention to the fact that 'under current law, an A 1 certificate is not mandatory in every case of short-term activity abroad, and in this respect there is a discretionary power of the Member States'. Referring to the case law of the European Court of Justice (ECJ), the BMAS states that A1 certificates can also be issued retrospectively and with retroactive effect, without a time limit being set. Therefore, 'on the basis of European law (...) there is no 'obligation to carry' the A1 certificate'. Moreover, this would 'hardly be compatible with the freedom to provide services and the free movement of workers', the BMAS continued.

However, the BMAS also points out: 'Insofar as there is an obligation to apply for an A1 certificate under national law in the country of destination, the waiver of prior application cannot be recommended even in exceptional cases'. According to the BMAS' current state of knowledge, this applies in particular to Austria and France. For further information, please click on the following link: [https://www.dvka.de/de/arbeitgeber\\_arbeitnehmer/transportwesen.html](https://www.dvka.de/de/arbeitgeber_arbeitnehmer/transportwesen.html).

### **BREXIT - POSTINGS STILL POSSIBLE, PENSION RIGHTS SECURED**

On 31 January 2020 the United Kingdom left the European Union. This is based on the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ EU L 29 of 31 January

2020, pp. 7-187; hereinafter 'Brexit Agreement'). It will initially apply until 31 December 2020, unless its period of validity is extended until 1 July 2020 by a maximum of one or two years (transitional phase), but it also already contains provisions which grant the persons concerned protection of confidence beyond its expiry.

During the transitional period, the European coordination law codified in Regulations (EU) Nos 883/2004 and 987/2009 will continue to apply in accordance with Title III of the Brexit Agreement. In addition, in the field of social security, the Agreement provides for a high level of protection of the status quo and of legitimate expectations which will continue to apply beyond the transitional period, currently 31 December 2020. Under Article 30(2) of the Brexit Agreement, persons to whom the Agreement applies remain covered by its provisions as long as they are continuously in one of the situations referred to, which concern both a Member State and the United Kingdom.

The effect of this on posting law is that A1 certificates for postings which begin before the end of the transitional period and continue beyond its end remain valid until the end of the posting. Consequently, members of the 'Versorgungswerke' who are temporarily posted to the United Kingdom after 31 December 2020 will continue to pay their contributions to the 'Versorgungswerk' even if the posting continues beyond 31 December 2020.

In addition, Article 39 of the Brexit Agreement provides for life-long protection of the rights arising from the Agreement, provided that the conditions laid down in it continue to apply. This applies in particular to all those who move to the United Kingdom, reside or work there before the end of the transitional period. In this case, insurance periods, including those after the transitional period, will be recognised and pension rights will be preserved. In addition, the persons concerned will have full access to the UK labour market and enjoy the right to equal treatment. However, they must apply for so-called "settled status" by 30 June 2021 at the latest.

#### **FURTHER INFORMATION ON BREXIT AND SOCIAL SECURITY LAW:**

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ EU L 29, 31.1.2020)  
[https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:22020A0131\(01\)](https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX:22020A0131(01))

BMAS, Brexit

<https://www.bmas.de/DE/Themen/Soziales-Europa-und-Internationales/Europa/Brexit/brexit-artikel.html>

DRV Bund, Current information on Brexit - Your pension is taken care of

<https://www.deutsche-rentenversicherung.de/DRV/DE/Rente/Ausland/Ansprechpartner-und-Verbindungsstellen/Grossbritannien-Nordirland/aktuelles-brexit.html>

Gov.uk, Guidance: Benefits and pensions for EEA and Swiss citizens in the UK

<https://www.gov.uk/guidance/benefits-and-pensions-for-eea-and-swiss-citizens-in-the-uk>

Gov.uk, Guidance: Living in Germany - Pensions

<https://www.gov.uk/guidance/living-in-germany#pensions>

Gov.uk, Apply to the EU Settlement Scheme (settled and pre-settled status)

<https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status?step-by-step-nav=0c79b832-75de-4854-8154-d62774a8dfb8>

## **FURTHER INFORMATION**

### **FAQs**

You will find compilations of FAQs on the law governing the posting of workers on the websites of DVKA and DRV Bund under the following links:

DVKA, FAQs: [https://www.dvka.de/de/arbeitgeber\\_arbeitnehmer/faq\\_1/faq\\_1.html](https://www.dvka.de/de/arbeitgeber_arbeitnehmer/faq_1/faq_1.html)

DRV Bund, FAQs:

[https://www.dsrv.info/de/Navigation/20\\_Unsere\\_Verfahren/01\\_Nationaler\\_Datenaustausch/03\\_Arbeitgeber/02>Weitere\\_elektronische\\_Verfahren\\_mit\\_dem\\_Arbeitgeber/03\\_A1/A1\\_node.html#doc545570bodyText3](https://www.dsrv.info/de/Navigation/20_Unsere_Verfahren/01_Nationaler_Datenaustausch/03_Arbeitgeber/02>Weitere_elektronische_Verfahren_mit_dem_Arbeitgeber/03_A1/A1_node.html#doc545570bodyText3)

[European Commission, Practical Guide to Applicable Law in the European Union \(EU\), the European Economic Area \(EEA\) and Switzerland, 2013.](#)

### **LEGAL BASIS**

[Regulation \(EC\) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems](#)

[Regulation \(EC\) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation \(EC\) No 883/2004 on the coordination of social security systems \(Text with relevance for the EEA and for Switzerland\)](#)

[Decision No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation \(EC\) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State](#)

[Law on the coordination of social security systems in Europe of 22 June 2011 \(SozSichEUG\)](#)

[Common principles for the electronic application and certification procedure A1 according to § 106 SGB IV in the version valid from 01.01.2019](#)