

# ed



Deutsche Sozialversicherung  
Europavertretung

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## From Member State to third country?

Brexit – potential consequences for social security



## Dear Reader,

Brexit has been the latest event to clearly show that the European Union (EU) is in a state of upheaval. Many EU citizens have lost faith in the EU. Looking back at the early days of the EU, it's also clear that back then, just as today, not everyone could be convinced of the vision and advantages of a peaceful, united and economically successful Europe. On December 11, 1951 in Paris, Paul Henri Spaak, known as a European visionary and talented persuader, summed it up perfectly when he said:

‘... some may be barely aware of the relevance and usefulness of this venture – but for a number of us, the task before us is of the utmost import and urgency ...’<sup>1</sup>

In retrospect, the United Kingdom, as a member of the European Union, has been actively helping to shape the benefits and visions of the EU in past years. Now, the current relationship with the EU must finish by the end of March 2019 and future relations have to be redefined.

But how does the UK's withdrawal affect social security? The time of free movement of goods and people with respect to the United Kingdom is coming to an end, or at least will be limited. This raises the question as to whether British pensioners living in Germany can continue to receive old-age pensions from the United Kingdom after Brexit. What does the future hold for what has been access to medical treatment for German citizens in the UK? What about European certifications or approvals for medical devices, drugs or personal protective equipment that has been fully acknowledged by the United Kingdom up until now?

The answers to many questions depend on the relationship between the EU and the United Kingdom following Brexit. However, it is already clear today that the separation between the UK and the EU means more bureaucracy and costs for all, including mobile citizens.

We hope you enjoy reading this edition of ed\*!



Ilka Wölflé

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<sup>1</sup> <https://europa.eu/european-union/about-eu/history>

# Bye, Bye Britain – the pain of divorce and losing member status

After 44 years of membership, the UK will leave the EU at the end of March 2019. This was the wish of a small majority of British citizens who participated in the 2016 referendum.

The price that both sides have to pay for this is being negotiated by the EU Commission, on behalf of the 27 Member States, with the United Kingdom. This is a process that differs from the usual procedures in the EU. Whereas the EU Commission normally seeks to deepen the economic and social integration of various European states, the Brexit negotiations are about dissolving existing ones.

Just a few days after the 60th anniversary of the EU, British Prime Minister Theresa May formally notified the European Council of the UK's intention to withdraw from the EU. This triggered Article 50 of the Treaty on European Union (TEU) which provides for the exit procedure for a Member State. The provision introduced by the Treaty of Lisbon states that 'Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.' Thus, it is not a request, but rather a unilateral declaration.

Triggering Article 50 has initiated a two-year negotiating period in which the details of the withdrawal are to be decided. This is specifically about dealing with matters for the period prior to the UK's exit during which the United Kingdom is still a member of the EU. In addition, there is supposed to be a transitional period with special rules until 31 December 2020 following the signing of the exit agreement. This was agreed by Michael Barnier, Chief Negoti-

ator for the EU-27 and the former Brexit negotiator for the UK, David Davis. However, there will only be a transitional period if both parties agree on a withdrawal agreement and a complete package is put together.

The exit negotiations under Article 50 of the TEU represent uncharted political territory for the EU in terms of both formal and substantive law because it usually negotiates with partners who want to join. In the past, Greenland had been the only country to leave the European Economic Com-

Triggering Article 50 on 29 March 2017 started the exit process



## European voices and opinions on exit negotiations



**Michel Barnier**

EU Chief Negotiator for the Preparation and Conduct of the Negotiations with the United Kingdom since 2016

“We are going to continue the work, by keeping in mind that all points will form part of the same agreement and should therefore be agreed together. I would add that legal certainty on all of the points, including the transition, which forms part of this agreement, will only come with the ratification of the Withdrawal Agreement on both sides. Nothing is agreed until everything is agreed.”



**Donald Tusk**

President of the European Council

“The EU27 has taken note of what has been achieved so far. However, there is a great deal of work ahead, and the most difficult tasks are still unresolved. If we want to reach a deal in October, we need quick progress. This is the last call to lay the cards on the table.”

President Donald Tusk on the European Council meetings of 28-29 June 2018



**MdEP Elmar Brok (DE, EVP)**

German politician and Member of the European Parliament and of the Brexit Steering Group

“The United Kingdom’s exit from the EU in March 2019 poses major challenges for both the EU and the UK, especially economic ones. Of course, it is easier for the EU to cope with the loss, with 27 EU Member States remaining together, than for the UK, which in the future will also become a third country to the EU, and therefore automatically lose all EU benefits and leave the single market. There will be no winners from Brexit, but the UK will be hit harder than the EU. We can only try to minimise the damage.”

munity (EEC) following a referendum. The negotiations lasted more than seven years and were finally regulated by Regulation (EEC) No 1661/85.

The withdrawal agreement will be discussed by the Member States in the Council. The European Parliament also plays a key role in the negotiations because the exit agreement must be approved not only by the Council, but also by the plenary of the European Parliament (Article 50(2) TEU). The Brexit Steering Group, under the chair of Guy Verhofstadt, was set up to prepare the relevant positions. The group regularly comments on proposals put forward during the procedure.<sup>2</sup>

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<sup>2</sup> A recent example is the Steering Group's comments on the UK's White Paper on the future UK-EU relationship. [http://www.epgencms.europarl.europa.eu/cmsdata/upload/94472a94-0ce9-4bf8-b596-6815625a240a/12072018\\_Draft\\_Statement\\_of\\_the\\_Brexit\\_Steering\\_Group.pdf](http://www.epgencms.europarl.europa.eu/cmsdata/upload/94472a94-0ce9-4bf8-b596-6815625a240a/12072018_Draft_Statement_of_the_Brexit_Steering_Group.pdf)

### What does Brexit mean for statutory social insurance?

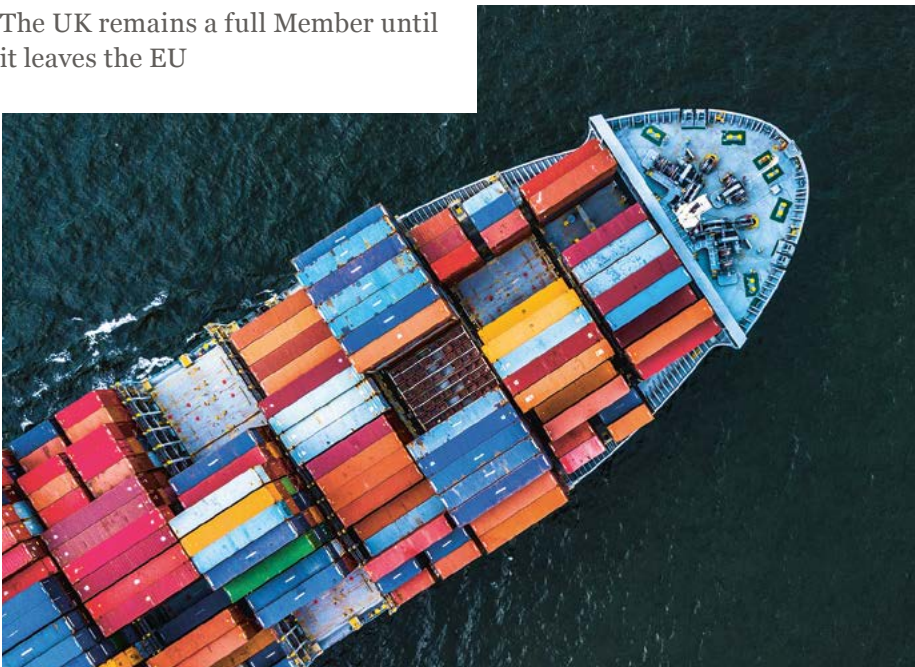
The United Kingdom's withdrawal is multifaceted and raises many legal and practical issues for social security, particularly with regards to the foreseeable restrictions on the free movement of people and goods. The freedom to provide services could also be affected, for example on patient freedom.

### The status quo until Brexit on 29 March 2019

Prior to the UK's withdrawal from the EU, the legal situation is clear: the United Kingdom remains a full member of the EU with all rights and obligations. Insured persons, companies and institutions can continue to rely on the rights and obligations specified in the Regulation on the coordination of social security systems.

For example, people covered by Germany's statutory health insurance system who are temporarily in the UK

The UK remains a full Member until it leaves the EU



**Brexit raises many issues for social security with regards to the foreseeable restrictions on the free movement of people and goods.**

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## In February 2018, the European Commission published a draft withdrawal agreement between the UK and the EU.

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for one reason or another, such as a holiday, can receive medical treatment using their European Health Insurance card. If a person has worked and had compulsory social insurance in Germany, France and the UK, the combined time spent in all three countries is taken into consideration – for both pension entitlements and pension calculations. If an employee is temporarily posted to the UK and suffers a workplace accident, they receive temporary benefits from the UK system which the local provider then settles with the relevant German accident insurance institution. Conversely, if a UK worker posted to Germany has an accident at work, they will continue to receive temporary benefits as per the provisions of Germany's social accident insurance system, including not only medical care but also occupational and social rehabilitation.

Germany's statutory health and pension insurance providers have set a restriction in terms of removing or changing the legal basis as of 29 March 2019. When assessing social security conditions, they restrict the currently applicable law to the scheduled exit date.<sup>3</sup> For example, in Germany this includes insured persons who are posted to the UK for a maximum of 24 calendar months. The evidence needed to prove that they continue to be subject to German social security legislation (A1 Certificate) will only be issued until March 29, 2019. The certificate is valid for all branches of statutory social insurance. Other Member States, such as France, are doing the same. This is intended to create legal clarity for all parties involved.

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<sup>3</sup> [https://www.deutsche-rentenversicherung.de/Allgemein/de/Inhalt/o\\_Home/meldungen/2017\\_03\\_29\\_brexit\\_grossbritannien.html?cms\\_submit=Los&cms\\_resultsPerPage=5&cms\\_templateQueryString=brexits](https://www.deutsche-rentenversicherung.de/Allgemein/de/Inhalt/o_Home/meldungen/2017_03_29_brexit_grossbritannien.html?cms_submit=Los&cms_resultsPerPage=5&cms_templateQueryString=brexits)

The European Health Card makes visiting a doctor easy



### Current status of negotiations – withdrawal agreement with transitional period?

The UK's declaration of withdrawal means that the EU is faced with a mammoth task. By the end of March 2019, the United Kingdom's existing ties with the EU must be dissolved and the future UK-EU relationship has to be redefined and worked out.

An important step towards this was the draft withdrawal agreement between the United Kingdom and the European Union published by the European Commission on 28 February 2018. According to the draft agreement, there are to be no changes to the implementation of EU regulations until the end of the transitional period and the status quo will be extended until 31 December 2020. This would mean that citizens of the EU and the UK will retain the same rights they have had so far with respect to the free movement of workers. Other than a few 'practical' amendments, such as registrations, there are to be no other changes in this area. The rules set out in the Regulations on the coordination of social security systems (EC) No. 883/2004 and (EC) No. 987/2009 will also continue to apply to those who are affected by these rules. This is particularly significant for the aggregation and payment of pension entitlements from statutory pension insurance schemes. The same is true for medical care when in other European countries and the use of the European Health Insurance Card (EHIC). Current time limitations set by statutory pension and health insurance for the A1 Certificate will be extended to 31 December 2020 at the latest.

Furthermore, the United Kingdom will continue to adhere to all EU rules

Rules on the free movement of workers are valid until the end of 2020



**People covered by Germany's statutory health insurance who are temporarily in the UK, including holidaymakers, can use their European Health Insurance Card (EHIC) to get medical treatment.**

and continue to make financial contributions. In return, the UK will retain access to the EU internal market and remain a member of the customs union. Products will continue to circulate as freely as possible, provided they have been approved in accordance with the rules currently in place in the European or British market. Rules on the mutual recognition of medicinal product authorisations, drug safety and monitoring will continue to apply until at least the end of the transitional period.

This also holds true for products that comply with European standards, certification procedures or conformity procedures, for example, products that are important for the safety and health of workers.

The aim of this is to hopefully soften the impact of Brexit on citizens and the economy. However, during this period, the United Kingdom will no longer have any co-determination rights and will have to implement new EU rules that arise without any formal involvement by the UK.

## Products will continue to circulate as freely as possible, provided they have been approved in accordance with European or British market rules.

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The rules on drug authorisations would continue to apply until the end of the transitional period



The European Commission's goal is to reach agreement with the UK by October 2018 so that the withdrawal agreement can be ratified by the European Council, European Parliament and the UK Parliament by 29 March 2019. Ratification in the other Member States is not necessary.

### Legal situation following the withdrawal – the UK as a third country?

Up until now, only the UK's exit date on 29 March 2019 has been set. Until the withdrawal agreement is finalised, the legal situation after this is still open in many areas. At the moment it is also unclear what kind of relations there will be between the EU and the UK after this date or after the potential transitional period.

If there is a transitional period, there must be clarification during this period with respect to the long-term partnership between both sides. The future relationship between the EU and the UK is already being discussed in parallel to talks on the withdrawal agreement. The assessment of matters in terms of social security depends largely on the UK's status following its exit from the EU.

### A hard Brexit – reviving old social security agreements

If the EU and the United Kingdom cannot reach agreement, this will result in the UK exiting without an agreement (hard Brexit). This means that the UK would no longer be a member of the EU after 29 March 2019 and, depending on the validity of existing social security agreements, would become either a contracting state or non-contracting country ('third country').



Potentially, social security could make use of the existing bilateral social security agreement from 1960 that is currently only used for the Isle of Man; however, this would need to be checked and revised given changes in national legal systems since 1960.

**The preferred way – a close partnership**

The European Council expressed in its guidelines on the future EU-UK relationship, published on 23 March 2018, that it wants a close partnership between the EU and the UK. As such,

the EU has emphasised that it is still interested in deeper cooperation with the UK after Brexit, but that the UK cannot enjoy the same rights as other EU Member States.

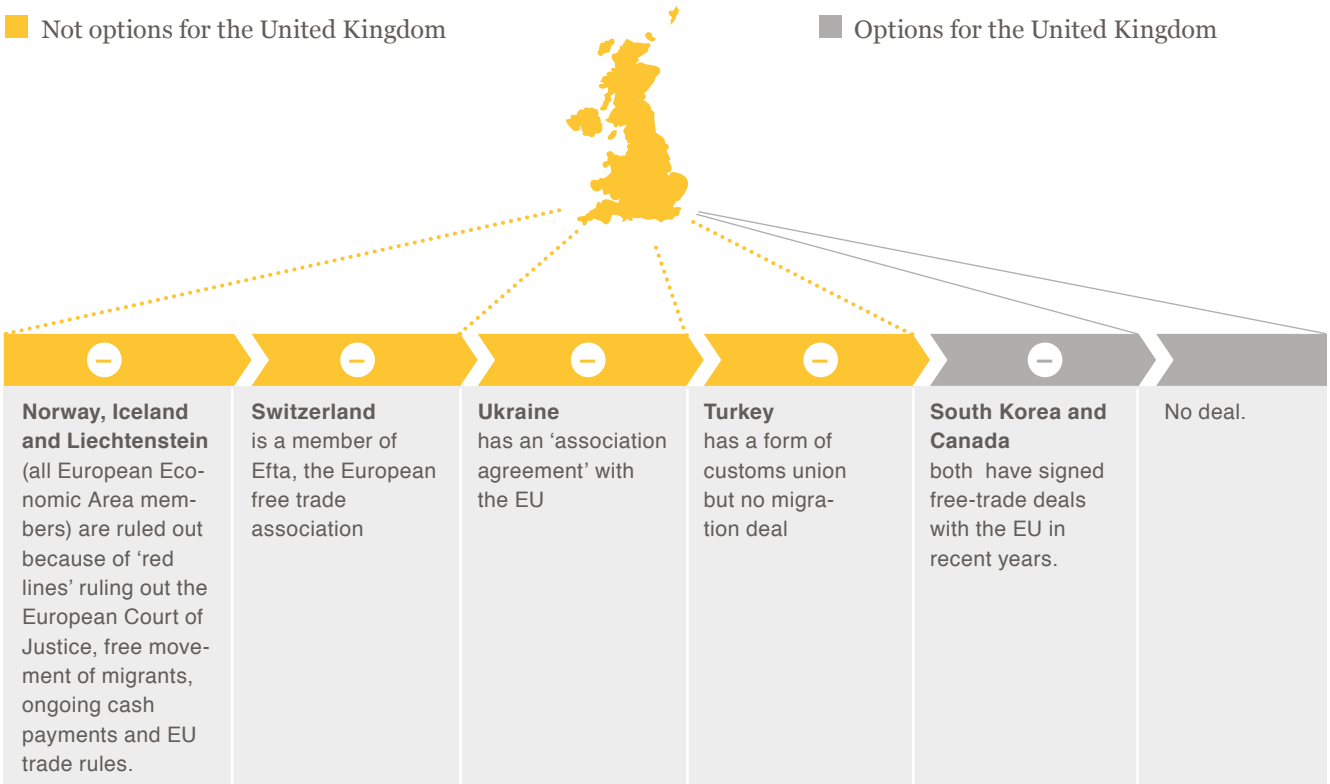
The UK also wants a particularly deep and close partnership that goes beyond a conventional free trade agreement. However, some areas are to be restricted, such as the free movement of workers.<sup>4</sup> The EU has rejected this ‘cherry picking’. The four fundamental freedoms of the EU are indivisible. This means that selectively participating in the internal

market in specific areas, such as the free movement of goods, but not of persons, is impossible.

The European Council believes that a future partnership should include comprehensive rules on the free movement of persons, including related areas such as the coordination of social security.

Uniform rules on the coordination of social security systems with the UK at European level would have the advantage that no bilateral agreements would have to be concluded between

**The EU already has relations with third countries, albeit to differing degrees.**



source: [https://www.huffingtonpost.co.uk/entry/michel-barnier-killer-graphic-brexit-theresa-mays-red-lines-on-bespoke-model\\_uk\\_5a39497ce4b0fc99878f2058?guccounter=1](https://www.huffingtonpost.co.uk/entry/michel-barnier-killer-graphic-brexit-theresa-mays-red-lines-on-bespoke-model_uk_5a39497ce4b0fc99878f2058?guccounter=1)

the UK and the EU Member States. Concluding these agreements would require a significant amount of time and would be particularly taxing on social security systems.

Solutions must also be found for the trade in medicinal products, medical devices and products that are important for the safety and health of workers. The same applies to the mutual recognition of authorisations for medicinal products. In the absence of suitable regulations, it may be difficult to authorise or market products. Any agreements should take into account the need to maintain current levels of protection and safety.

A close partnership would also have a positive impact on occupational safety and health. The prevention work done by Germany's statutory accident insurance is based on the European OSH regulations. After the UK withdraws from the EU, it will no longer be bound by these common OSH regulations unless there are special arrangements in this area, for example as part of a free trade agreement or partnership agreement. If an agreement cannot be reached, it could result in different levels of OSH which could have an effect on posted workers. Germany's statutory social insurance has already highlighted this issue during discussions on other free trade agreements.

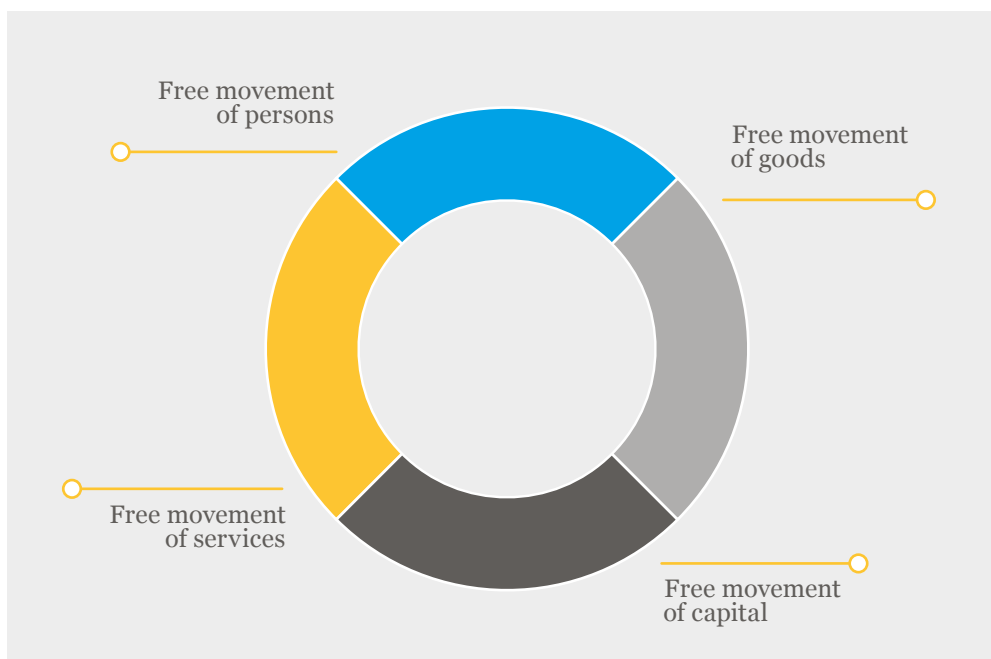
Another option would be for the United Kingdom to join the European Economic Area (EEA) based on the model of the three EFTA countries of Norway, Iceland and Liechtenstein. This would mean that all four fundamental freedoms would apply, as well as the EU Regulations on the coordination of social security systems.

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4 White Paper about the future relationship between the United Kingdom and the European Union

<https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

## The 'Four Freedoms' of the European Union



## Challenges for the social security institutions

The best option for Germany's statutory pension, accident and health insurance institutions would be for EU legislation to continue unchanged for an indefinite period of time. Regardless of which option is put in place, it is important to stay as close to existing EU laws as possible.

Many questions can therefore only be resolved when the contractual arrangements, which are yet to be worked out, come to light. For example, what is the situation for pensions for workers who have spent time working and paying obligatory contributions in Germany, the UK and potentially other EU countries? How will previous insurance periods in the UK be taken into account in the future? How will entitlements and qualifying periods be maintained? How will occupational diseases or workplace accidents covered by accident insurance be taken into account in the other country?

On the other hand, the EU has extensive experience in dealing with issues arising from the relationships with non-EU countries. This experience can be used for the relationship with the UK as a non-EU country. Assessing future processes and structures can be based on existing agreements with other third countries (see graphic below on 'Future Relationship').

The current state of proceedings and the likely consequences of Brexit are characterised by uncertainty in terms of how Brexit will work and how the relationship with the UK will be afterwards. According to the motto 'nothing is agreed until everything is agreed',

Brexit negotiations are uncharted political territory for the EU



**The best option for Germany's statutory pension, accident and health insurance would be for EU legislation to continue unchanged for an indefinite period of time.**

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a lot can change during the course of negotiations. The only thing that is certain at the moment is that practically nothing will change for social security before the Brexit deadline of 29 March 2019.

It is still uncertain whether there will be a transitional period from 30 March 2019 to 31 December 2020 and whether the status quo will remain unchanged because the transitional period is tied up with the withdrawal

agreement as a whole. If there is a transitional period, this would mean that major changes will not take place until 2021. Without further regulation, and depending on the validity of existing social security agreements, the United Kingdom would either be a contracting state or a non-contracting country ('third country'). EU-UK relations can be regulated by bilateral or multilateral agreements or by regulations of organisations in which both parties are members (such as the World Trade Organization). Discussions on these future relations have already begun, but the conclusion of an agreement on future relations will not be possible until the United Kingdom ceases to be a member of the European Union.

The goal of German's social insurance system is to monitor the Brexit process, which is associated with uncertainty for many insured persons, and to provide up-to-date information and practical advice.

The likely fallout from Brexit is uncertain



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