Germany

German cabinet decides draft Brexit transition act to provide legal certainty for transition period

Executive summary
The German cabinet has decided on a Brexit transition bill for the transition period after the United Kingdom’s withdrawal from the European Union.

Under the Bill, which has yet to be presented to parliament, it is intended that from a German perspective, the United Kingdom will, in principle, continue to be treated like an EU Member State during the planned transition period between 30 March 2019 and 31 December 2020. This will apply in respect of all relevant German federal laws, including immigration matters. This means during the transition period, UK citizens will be able to travel, stay and work in Germany without any restrictions.

This alert discusses the immigration aspects of this draft act. Further alerts will discuss the other people related implications including social security.

Background
On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland notified the European Council of their intention to withdraw from the European Union and officially initiated the Article 50 procedure. While the negotiations are ongoing, it is not yet clear whether this will be a “soft” or “hard” Brexit (the latter meaning that trade in the future may have to be conducted solely on the basis of the rules of the World Trade Organization).

According to the German ministry of foreign affairs which prepared the draft, the main objective of the new law is to establish legal clarity for the transitional period in those provisions of federal law that refer to the membership of the EU. It provides that when federal law refers to the EU Member States, during the transition period it will also still refer to the United Kingdom, provided that none of the exceptions apply.

In addition, the law will contain a provision in favor of UK citizens who apply for German naturalization before the end of the transition period. They will be allowed to retain their British citizenship, even if the decision on their naturalization is taken after the end of the transitional period. In such cases, dual nationality may be accepted under certain conditions.

In a next step the government’s draft legislation must be passed by the Bundestag (lower house of German Parliament) with the approval of the Bundesrat (upper house of German parliament).

The Brexit act should enter into force on the day on which the withdrawal agreement between EU and UK enters into force, which is presently expected to be 30 March 2019. This ensures that the provisions of the law will not apply if the withdrawal agreement is not concluded. However, the law leaves it open which transitional rules are to apply if the withdrawal agreement is not concluded on 30 March 2019.
As the bill would only apply in respect of federal law, the state government of North Rhine-Westphalia is presently drawing up its own bill for a transitional Brexit law. Other states in Germany may follow to address these issues at state level.

Next steps
In the event that a withdrawal agreement is concluded between the United Kingdom and the EU, employers and employees would have certainty in terms of free movement and the ability of UK citizens to stay and work in Germany, at least until the end of 2020.

EY will stay in close contact with the authorities further and will provide an update as soon as there are any developments.