Cross-border telework

New European framework agreement as of July 1, 2023

European rules: principle

Regulation 883/2004 coordinates the social security legislations of European Member States where only one social security system can apply. The main rule is that a person is subject to the social security legislation of the Member State in which he or she works. In case of simultaneous employment in two or more Member States, the worker is covered by the social security system of:

- his Member State of residence if he works there at least 25% of his working hours;
- the Member State of his employer's registered office if the employee works less than 25% of his working hours in his Member State of residence.

When a frontier worker living in the Netherlands works from home 1 day a week, and the other days at the business location of his Belgian employer, Belgian social security applies. However, when after some time this person works from home 2 days a week, he becomes subject to the Dutch social security system and the employer has to set up a foreign payroll.

Temporary easing - Covid-19

During the COVID-19 pandemic, many workers were forced to work from home. In principle, this obligation would have the effect of changing the social security of frontier workers to the applicable social security system of their country of residence. Consequently, government agencies at the time allowed a tolerance so that the compulsory telework periods of frontier workers in their country of residence did not result in a change of the applicable social security system.

This temporary tolerance that began on March 13, 2020 was extended several times and has definitively come to an end on June 30, 2023.

New scheme

Meanwhile, employers and employees have embraced hybrid working, and telework has become a fixture. As the temporary tolerance comes to an end, this would mean that as of July 1, 2023, frontier workers become subject to the social security system of their state of residence and no longer that of the state of work, if the frontier worker teleworks at least 25% of his working time.

To prevent that from happening, a European framework agreement was reached providing for an opt-in scheme for workers who telework partly in their state of residence and work partly in another Member State, where the employer is based.

This Framework Agreement allows the social security legislation of the employer's Member State to continue to apply to frontier workers:

- who telework on a regular basis from their country of residence, other than the country in which their employer has its registered office;
- who spend less than 50% of their total working time teleworking; and
- provided that both countries have signed the Framework Agreement (if not, the "25% rule" from the European regulation must be applied).

To benefit from this derogation, an application must be filed with the NSSO for your employees concerned. If approved, the NSSO will issue an A1 certificate for each employee. The application is valid for a period of up to three years, after which a new application must be made.

Meanwhile, most of our neighbouring countries including Luxembourg, the Netherlands and Germany have signed this agreement. It will become clear in the coming months which other countries will join this arrangement. You can track the accession status on the following website: https://socialsecurity.belgium.be/en/internationally-active/cross-border-telework-eu-eea-and-switzerland

As far as taxation is concerned, everything remains as it was. The double taxation treaties simply continue to apply to determine the allocation of taxing rights between the various countries. The Framework Agreement only affects the social security contributions you must pay for the employee and the social security system that applies to the employee.

Employee benefits

This agreement offers a welcome solution for many employees in terms of social security, as well as for the continued affiliation to the employee benefit plans within the company.
In most supplementary pension plans, disability plans and medical expense plans, being subject to the Belgian social security system is the first requirement for affiliation to the Belgian plans. If an employee is no longer subject to Belgian social security, he or she will in principle be excluded from the plan and the employer will have to look for a local solution, which differs from one country to another.
This Framework Agreement ensures that the new way of working will have little or no impact on cross-border teleworkers.
If you still have questions for one of your employees concerning the impact on your supplementary plans, do not hesitate to contact your Account Manager or HC Consultant.

Vanbreda Risk & Benefits
Plantin en Moretuslei 297, 2140 Antwerp