



Mobility: Social Security

June 2023

European Union

Framework Agreement on social security for cross border telework

Executive summary

The Framework Agreement concerning cross border telework within the EU/EEA/Switzerland will come into force from 1 July 2023. This agreement is relevant for cross border commuters who regularly telework in their residence country. Under this new agreement they can remain socially insured in the country where their employer is situated, while working below 50% in their residence country and the other part (the majority) in the employer country. This ensures that the amount of time an employee can work in their country of residence increases, without creating social security obligations in that country for the employer. A welcome measure, but only in limited situations, as specific conditions must be satisfied.

There will be new employer requirements in terms of obtaining A1 certification.

The change brings an end to the existing 'no impact' concessionary treatment that has been in place since the COVID-19 pandemic and could result in a change in the country where social security is payable, depending on the employee's working pattern.

Employers should identify and review the social security position of their cross-border teleworkers.

Background

During the COVID pandemic, many employees were forced to work from home. However, in cross-border situations, structurally working from home could carry the risk of unintentionally triggering a social security obligation in the country of residence. Under the regular EU social security rules, the cross-border worker is subject to the residence country social security system when working substantially in the residence country with 'substantially' meaning 25% or more of the total working time and/or remuneration.

During the pandemic so called 'no-impact' or 'neutralisation' measures were in place to ensure that the increased teleworking did not result in a switch to the residence country social security system. However, post-pandemic, hybrid working remained popular even for cross border situations. With the fundamental rules within the EU often requiring employers to register for social security contributions in locations where their employees worked, but were not based, employers (and employees) were potentially hesitant to allow cross border telework. The 'no impact' concessionary treatment was only ever intended to be temporary and was extended several times to 30 June 2023. In the meanwhile, an Administrative Commission ad hoc working group was formed to create a more structured solution for cross border telework.

New Framework

The Multilateral Framework Agreement (MFA) includes the right to choose to be socially insured in the employer country and applies to employees who work more than 25% in their residence country, but less than 50% of their total work time. In such cases, employers and employees can agree to apply the MFA and file for an A1 certificate, which is valid for up to three years (country specific exceptions apply) and can be extended upon request.

Important conditions

- ▶ The MFA applies to cross border commuters; employees who are employed by an employer located in a European state, while living in another European state. Both countries should have signed the MFA (see list of states below)
- ▶ The employee should remain connected to the employer's working environment via a digital connection (IT link) while performing the work. Note: the MFA is not restricted to working from home. The work can be done anywhere in the residence country, while using a digital connection.
- ▶ The MFA seems to allow limited work activities in other countries, not being the country of residence or employer. Occasional business meetings or client visits to third countries should not preclude the application of the MFA. Further guidance is to be expected.
- ▶ The teleworker works below 50% in the country of residence and spends the majority of their time working in the employer state.
- ▶ The MFA is optional: those who want to make use of it should apply for an A1 on the basis of article 16 of Regulation 883/2004. This A1 serves as proof that the social security legislation of the employer state is applicable. The A1 application must be made in consent between the employer and the employee. In the absence of an A1 the regular rules apply (i.e. the 25% threshold).
- ▶ For all non-MFA situations, the regular rules apply (i.e., the 25% threshold) or a 'regular' article 16 agreement may be requested.
- ▶ In addition, the employee must have paid social security contributions in the employer's country of residence during the period in question.

The MFA does not apply to temporary teleworking, such as working abroad from a holiday address or 'workcation'. For such work, which is not structural but incidental, the EU is working on guidance that is projected to be published before 1 July 2023 (AC meeting planned on 21 and 22 June).

List of signing states and entry into force

Belgium maintains a list of signing states, which can be found here: <https://socialsecurity.belgium.be/en/internationally-active/eu-cross-border-telework-eu>

The UK have indicated that they will not sign this agreement as the MFA would only be accessible for pre-Brexit cases (the EU-UK Trade Agreement does not contain a specific article 16 clause). The A1 requests can be made in the employer country as of 1 July 2023 (if by then the agreement has been signed by the two countries concerned). If these countries have not signed the agreement or one of the countries signs at a later date, the MFA can be invoked only as of that later date. Applications filed before 1 July 2024 can have retroactive effect until 1 July 2023, or the date of signature if the country signs at a later date. After this 'grace period', an application can only have a retroactive effect for up to 3 months.

Implications and actions for employers

Employers should identify the facts and circumstances of the individuals who are teleworking in the residence country, to determine if they fulfil the specific conditions of the MFA and whether the MFA is an option for the whole organisation. Any decisions should of course be taken within the context of wider risk and policy considerations concerning cross border remote working, such as permanent establishment risk, income/wage tax and employment law.

Please reach out to one of our International Social Security specialists or your local EY advisor for more details.

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