

Framework agreement on cross-border telework

Introduction

Regulation (EC) no. 883/2004 of the European Parliament and of the Council on the coordination of social security systems lays down a general principle according to which an employee must be **affiliated in only one State**. A worker is therefore in principle affiliated to the social security system of the country where he works (State of employment, State where his employer is established). In the event of **substantial activity** carried out in his State of residence, however, the worker must be subject to the social security system of his State of residence.

Until then, if an employee worked **at least 25%** of his working time and/or received 25% of his remuneration in his country of residence, all remuneration received in the various countries was subject to a single social security scheme, that of his country of residence.

Since then, teleworking days have been added to this 25% figure, thereby limiting the possibilities for cross-border employees to telework if they wish to remain affiliated to the Luxembourg social security system.

If the 25% limit is exceeded, the Luxembourgish company must register as a "foreign company" with the foreign social security organisation and pay the employer's contributions for that foreign country, which are higher than in Luxembourg. For his part, the employee will be covered by the social security system of his country of residence (and no longer by that of Luxembourg).

The health measures taken during the COVID-19 pandemic (teleworking strongly recommended) forced employers to authorise teleworking and employees to adopt it. Teleworking exploded as a result. As soon as the COVID-19 pandemic began in March 2020, Luxembourg and neighbouring countries decided that periods of teleworking carried out on their territory by their border residents as a result of the coronavirus would not be taken into account when determining the applicable social security legislation so as to avoid a change in the worker's social security status due to accumulated teleworking. This transitional neutralisation measure will end on **30 June 2023**.

As this scheme comes to an end, the 25% limit will apply once again. **Teleworking continues to be a new permanent working method today**, however. In order to avoid having workers fall under the social security system of their country of residence, the EU Member States have drawn up a framework agreement under the terms of which workers who spend less than 50% of their working time in their country of residence can remain subject to the social security system of their country of employment, and thus **to work more days from home**.

Concluded for a **5-year** term this framework agreement will come into force on **1 July 2023**, immediately after the expiry of the transitional period linked to the pandemic. It is therefore to find out more about the issue.

[> What does this framework agreement entail?](#)

[> What are the conditions for benefiting from this framework agreement?](#)

[> What telework is covered by the framework agreement?](#)

[> How to qualify under the framework agreement?](#)

[> When should the application be filed?](#)

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What does this framework agreement entail?

The framework agreement provides for the possibility for workers and employers **to apply** to telework up to 49% while remaining affiliated to the Luxembourg social security system. The 49% limit will therefore not be automatic; it will have to be requested!

This option is available to teleworkers in Luxembourgish companies only if the **employee's country of residence has also signed the framework agreement**.

A list of signatory countries is available here: [Cross-border telework in the EU, EEA and Switzerland | Federal Public Service – Social Security \(belgium.be\)](#)

Luxembourg, Germany, France and Belgium have already signed the agreement at present.

What are the conditions for benefiting from this framework agreement?

For the application to be accepted, the following cumulative conditions must be met:

- The State of residence and the State in which the employer is established **are two different States which have both signed the framework agreement**.
- The employees are employed by a **single employer** (or several employers located in the same Member State).
- They **telework** in their State of residence **25% or more of their total working time without exceeding 50% of their total working time**. Note that if a person works for several employers, the total working time of all the employers combined will be used as a reference. This means that the majority of the working time is spent in the Member State where the employer(s) are located.

- They do **not carry out any other regular activity** in a country other than the country of residence and the country in which the employer is established.

Example: Louise teleworks 40% of her time from her home in Belgium and 60% in the Netherlands at the premises (branch) of her employer, which has its registered office in Luxembourg. As Louise works outside the signatory country where her employer's registered office is located, the framework agreement does not apply.

- They do **not carry out any activities other than teleworking** on a regular basis in their country of residence.

The following workers are consequently excluded:

- The self-employed
- Employees working for several employers in different countries
- Employees who usually carry out an activity other than teleworking in their State of residence
- Employees who habitually carry out an activity in a State other than those of the State of residence and those of the State of the headquarters.

What telework is covered by the framework agreement?

According to the framework agreement, a **digital connection** (computer link) with the company's infrastructure constitutes an integral part of the definition of telework. The teleworker must therefore remain connected to the employer's working environment in order to carry out the tasks assigned to him. This computer link must be normally and habitually present, but not necessarily during all (100%) of the working time.

The telework must be "cross-border", i.e. carried out in the employee's country of residence, which is a country other than that in which the employer is established. The framework agreement also specifies that such **cross-border** telework must be the subject of a formal or informal agreement by and between the employer and the employee.

How to qualify under the framework agreement

An application must be filed for an employee to be subject to the social security legislation of the Member State in which the employer has its registered office or place of business. For employees of Luxembourgish companies, this means that the application will have to be submitted to the Centre Commun de la Sécurité Sociale (CCSS) [Joint Social Security Centre] for continued affiliation to the Luxembourgish scheme.

The application to fall under the framework agreement must therefore be filed **jointly by the employer and the employee**.

If all the conditions are met, an A1 certificate will then be issued to the employee for a **period of 3 years**. If teleworking that meets the conditions of the framework agreement continues beyond that date, a new application will have to be filed.

If the situation changes, the employer or the employee must immediately inform the Member State which issued the certificate. This Member State must reassess the case and, if necessary, withdraw or terminate the A1 certificate.

The **website www.teletravail.ccss.lu has been provisionally set up** by the CCSS to make it easy for employers to declare the regular teleworking of their cross-border employees.

In concrete terms, employers will need to complete **an online form** individually for each employee concerned. To that end, they will need a token (a unique identification code), which will be sent to them by post in the next few days. Employers who have not received a token by 1 July 2023 and who wish to declare the teleworking of their non-resident employees should contact the CCSS by e-mail at ccss@secu.lu with "Demande token + [matricule employeur]" (Request token + [employer registration number]) in the subject line.

Based on the information provided via the online form, the CCSS will process the requests in accordance with the procedure of the new framework agreement.

Declaration via the online form is only a temporary solution. The CCSS is actively working to develop permanent solutions for telework declaration. The declaration, in particular via Seculine, is planned for the first half of 2024.

When should the application be filed?

All applications must be filed **for the future**, and the framework agreement can **never take effect before its date of entry into force**, i.e. before 1 July 2023. Nevertheless, aware that a period of adaptation to the actual situation of telework deserves a certain flexibility, the Member States have agreed to accept a certain degree of retroactive force.

The framework agreement thus provides for two cases in which the application may pertain to an earlier period, **provided that the social security contributions have already been paid in the employer's country** for said period:

- For applications filed before 30 June 2024: a retroactive effect of **12 months maximum** will be allowed. In other words, employers have a period of one year to have the regular teleworking of their cross-border employees approved for up to 49%.
- For subsequent applications: the retroactive effect will be limited to **3 months maximum**.

Conclusion

This long-awaited agreement is a **real step forward for teleworking** by the many cross-border workers in the Grand Duchy. From now on, cross-border workers will be able to telework **almost half of their time** while remaining affiliated to the Luxembourg social security system.

However, this news needs to be qualified at once. It should be underscored, in fact, that the provisions we have just seen apply only to **social security** and therefore make sense only if the cross-border worker intends to exceed his tax tolerance threshold.

No changes have been announced to date regarding taxation. The rules set out in the double taxation agreements continue to apply unchanged. This possibility offered by the framework agreement has no impact on the tax tolerance thresholds - 34 days for Belgium and France and 19 days for Germany. It is therefore in the interest of cross-border employees to avail themselves of this right to 49% only if they wish to exceed their tolerance threshold and therefore agree to be taxed in their country of residence for all days worked outside Luxembourg.

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