

Cross-border teleworking: new measures to allow employees to remain covered by the social security scheme of the country of their employment

12 July 2023

As a result of measures taken during the health crisis of the Covid pandemic, the application of regulation 883/2004 on the coordination of social security systems was neutralized by a number of unilateral declarations, the validity of which expired on 30 June 2023. With the aim of finding a long-term solution in the context of an ever-increasing use of telework, the EU Member States have opted for a framework agreement to be exclusively applied to cross-border teleworkers. This framework agreement took effect on 1 July 2023.

Pursuant to Article 13 p3 1 a) of Regulation 883/2004, border workers are subject to the social security system of the EU Member State in which they carry out the substantial part of their professional activity.

Should a cross-border worker then perform more than 25% of their professional activity teleworking in their country of residence, he/she would by virtue of the regulation, become subject once again to the social security system in that particular country.

In light of the increasing popularity of teleworking, the EU Member States have agreed on a permanent solution for cross-border workers via the framework agreement.

- Scope of application

The framework agreement defines cross-border telework as "an **activity which can be performed from any location** other than that of the employer's premises and which:

1. **is performed in one or more Member States other than that in which the employer's premises are located**, the place of telework therefore not necessarily being the employee's actual home,

2. **relies on information technology** to remain connected to the employer's working environment and organization (...)".

As such, when cross-border telework in the EU State of residence represents **less than 50%** of the total working time, the employee will now remain affiliated to the social security system in the State of the usual place of employment.

- Implementation

To implement the new measure, the employer should make a request on behalf of and with the employee's **formal agreement** using an A1 certificate (Article 16 of Regulation 883/2004). The framework agreement cannot be put into application without this formal request.

The formal request made with the A1 certificate is submitted to the Member State authorities where the employer's premises are located, and with a fast-track processing time. Provided that the two Member States concerned are both signatories to the framework agreement, no joint examination of the application is necessary. The Member State issuing the certificate simply has to make an online declaration to the authorities of the teleworker's country of residence.

Applications are valid for a **maximum length of 3 years** and may be extended subject to the filing of new applications.

- Limited application

- **The framework agreement can only be applied between two signatory states.** In all other situations, and where only one of the two Member States is signatory to the framework agreement, Regulation 883/2004 remains applicable.

As at 1 July 2023, the Member States signatory to the framework agreement are:

Austria, Belgium, Croatia, the Czech Republic, Finland, France, Germany, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland.

The United Kingdom has already indicated that it will not be signatory to the framework agreement.

- Further to this, the worker must have **one employer only**, or in the case where there are several employers, they must all be established in the same Member State.
- The framework agreement does not apply to self-employed workers or to **workers on secondment** within the meaning of Article 12 of Regulation 883/2004.

These new rules only apply to social security bodies and are specific to cross-border working.

Tax law is applied independently which in itself could result in difficulties for cross-border workers.

It is imperative that at a company level the rules governing telework are clarified.

Our legal teams are at your disposal to review any of these points with you.

Contacts



Anne Frede

Partner, Attorney-at-Law
T +33 1 41 16 27 11
E AFrede@avocats-gt.com



Marik Viollet

Attorney-at-Law
T +33 1 41 16 27 31
E MViollet@avocats-gt.com



About Grant Thornton Société d'Avocats

Grant Thornton Société d'Avocats supports its clients in all their strategic operations, whether in national or international context through multidisciplinary expertise in all areas of business law.

The firm offers national and international customers all required services for the legal, tax and business management of companies. We deal in all business law matters: legal, tax, labour and contractual due diligences, mergers and acquisitions, tax law, VAT and international trade, global mobility, commercial law, employment law and finally business litigation.

NOTE: This memorandum is of a general nature and no decisions should be taken without further advice. Grant Thornton Société d'Avocats shall not accept any legal liability relating to the consequences of any decision or any action taken as a result of the information above. You are encouraged to seek professional advice. We would be happy to discuss the application of any of these changes to your situation.

© 2023 Grant Thornton Société d'Avocats, All rights reserved. Grant Thornton Société d'Avocats is a law firm related to Grant Thornton in France, which SAS Grant Thornton is a member firm of Grant Thornton International Ltd (GTIL). "Grant Thornton" is the brand under which the member firms of Grant Thornton provide Audit, Tax and Advisory services to their clients and / or designates, depending on the context, one or more member firms. GTIL and the member firms do not constitute a global partnership. GTIL and each of the member firms are independent legal entities. Professional services are provided by member firms. GTIL does not provide any service to customers. GTIL and its member firms are not agents. There is no obligation between them.

Grant Thornton Société d'Avocats

29, rue du Pont
92200 – Neuilly-sur-Seine
France

www.avocats-gt.com

T : +33 (0)1 41 16 27 27

F : +33 (0)1 41 16 27 28

E : contact@avocats-gt.com

Bureau de Lille

91, rue Nationale
59045 – Lille, France

www.avocats-gt.com

