



ADOPTED TEXT N° 819

Provisional Act

NATIONAL ASSEMBLY

CONSTITUTION OF 4 OCTOBER 1958

FIFTEENTH LEGISLATURE

2021-2022 ORDINARY SESSION

9 March 2022

EUROPEAN RESOLUTION

*to increase teleworking by cross-border workers
and to conduct a European discussion on their status.*

*Is considered as final, pursuant to Article 151-7 of the Rules
of Procedure, the resolution which reads as follows:*

See numbers: 4276 and 4931.

Single Article

The National Assembly,

Having regard to Article 88-4 of the Constitution,

Having regard to Rule 151-5 of the Rules of Procedure of the National Assembly,

Having regard to Regulation (EC) N° 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

Having regard to Regulation (EC) N° 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the implementing provisions of Regulation (EC) N° 883/2004 on the coordination of social security systems

Having regard to the Convention on social security between the French Republic and the Principality of Monaco, signed on 28 February 1952,

Having regard to the bilateral convention on social security between the French Republic and the Principality of Andorra, signed on 12 December 2000,

Having regard to the Convention between the French Republic and the Federal Republic of Germany for the avoidance of double taxation and the establishment of rules of reciprocal administrative and legal assistance in respect of income and wealth taxes as well as in respect of occupational and land taxes, signed on 21 July 1959,

Having regard to the amicable agreement of 16 February 2006 relating to the provisions applicable to cross-border workers, within the framework of the aforementioned French-German tax convention of 21 July 1959,

Having regard to the tax convention between France and the Principality of Monaco of 18 May 1963,

Having regard to the Convention between France and Belgium for the avoidance of double taxation and the establishment of rules of mutual administrative and legal assistance in respect of income taxes of 10 March 1964,

Having regard to the Convention between the French Republic and the Swiss Confederation for the avoidance of double taxation with respect to income and wealth taxes and the prevention of tax fraud and evasion, signed on 9 September 1966,

Having regard to the Agreement between the Government of the French Republic and the Swiss Federal Council on the taxation of the remuneration of cross-border workers, signed on 11 April 1983,

Having regard to the Convention between the Government of the French Republic and the Government of the Italian Republic for the avoidance of double taxation with respect to income and wealth taxes and the prevention of tax evasion and fraud signed on 5 October 1989,

Having regard to the Convention between the French Republic and the Kingdom of Spain for the avoidance of double taxation and the prevention of tax evasion and fraud with respect to income and wealth taxes signed on 10 October 1995,

Having regard to the Convention between the Government of the French Republic and the Government of the Principality of Andorra for the avoidance of double taxation and the prevention of tax evasion and fraud with respect to income taxes signed on 2 April 2013,

Having regard to the Convention between the Government of the French Republic and the Government of the Grand Duchy of Luxembourg for the avoidance of double taxation and the prevention of tax evasion and fraud with respect to income and wealth taxes signed on 20 March 2018,

Considering that a frontier worker is any person who pursues an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he/she returns in principle every day or at least once a week pursuant to Regulation (EC) N° 883/2004 of the European Parliament and of the Council of 29 April 2004;

Considering that a worker pursuing an activity as an employed or self-employed person in two or more Member States is subject to the legislation of the State of residence if a substantial part of his/her activity is carried out in that State, pursuant to Regulation (EC) N° 883/2004 of the European Parliament and of the Council of 29 April 2004;

Considering that an activity carried out in the State of residence is deemed to be substantial if it exceeds an annual threshold set at 25% of the employee's working time or remuneration pursuant to Regulation (EC) N° 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down detailed implementing provisions of Regulation (EC) N° 883/2004 of the European Parliament and of the Council of 29 April 2004 referred to above;

Considering that a professional activity carried out by cross-border workers via telework is equivalent to the exercise of an activity in two or more Member States within the meaning of Regulation (EC) N° 883/2004 of the European Parliament and of the Council of 29 April 2004 referred to above, entailing their affiliation to the social security system and the payment by the employer of social contributions to the State of residence, when this activity is above the 25% threshold, i.e. only one day per week;

Considering that the bilateral tax conventions and agreements concluded by France with border States provide, for a majority of them, with the exception of the conventions and agreements concluded with Luxembourg and certain cantons of the Swiss Confederation, for taxation in the State of residence of the worker working in a border State, subject to compliance with conditions of residence or thresholds of days spent in the border area, which vary according to the text in question;

Considering that the above-mentioned tax convention of 20 March 2018 between France and Luxembourg provides for a recently increased quantum of 34 days of work outside the State of activity, below which a cross-border worker may telework without any consequence on the applicable tax regime;

Considering that the management of the health crisis linked to covid-19 has led the Member States, in addition to unilateral border closures, to

decide on the introduction of compulsory and generalized measures for placing employees in telework;

Considering that the social security administrations, meeting within the Administrative Commission for the Coordination of Social Security Systems, faced with this case of force majeure, agreed to introduce a flexibility measure, extended on several occasions, aimed at neutralising the effects of this placement in telework on the social security affiliation of multi-activity workers, including cross-border workers;

Considering that temporary amicable agreements have been put in place between France and the border States and extended on several occasions, in order to neutralise the effects of the placement of employees in telework on the taxation systems of cross-border workers, by specific adjustments to the thresholds and conditions provided for in each text;

Considering that the positive gains associated with telework placement on the well-being and productivity of cross-border workers, on the rate of use of transport infrastructure, on local economic dynamism and on the environment have been demonstrated;

Considering that the majority of cross-border workers have already indicated that they are in favour of making teleworking permanent, beyond the possibilities resulting from the application of the current rules on social security and taxation;

Considering that the limitation of teleworking possibilities for cross-border workers resulting from the application of the current social security and taxation rules could lead to discrimination between cross-border workers and residents within companies;

1. Deems it necessary to offer cross-border workers the possibility of teleworking for up to two days a week without this having any consequences for the determination of the social security and tax systems applicable to them;

2. Deems it necessary for these legislative developments to take place in the future within the framework of a more global European movement to take account of issues relating to the status of cross-border workers;

To renew the rules applicable to social security:

3. Invites, therefore, the social security administrations of the Member States, meeting within the Administrative Commission for the Coordination of Social Security Systems, to define, on the basis of Article 16 of Regulation (EC) N° 883/2004 of the European Parliament and of the Council of 29 April 2004, a common agreement on the category of persons constituted by cross-border workers in order to adapt the provisions applicable to their situation with regard to multi-activity employment and to allow them up to two days of teleworking per week without affecting the State in which they are affiliated for the purposes of payment of social security contributions;

4. Invites the French Government, in the event of failure of the technical negotiations on a common solution, to initiate the conclusion of bilateral agreements on the basis of Article 16 of Regulation (EC) N° 883/2004 of the European Parliament and of the Council of 29 April 2004 referred to above in order to achieve the same objective;

5. Invites the French government to support, during the French presidency of the European Union, the resumption of negotiations on the reform of the regulations on the coordination of social security systems, extending it to the subject of cross-border workers by means of an additional provision reserving teleworking for cross-border workers for weekly periods of up to two days;

To renew the rules applicable to taxation:

6. Invites the French Government to contact the States bordering France with a view to renewing tax conventions so that two days of teleworking per week are possible without any impact on the State of taxation of cross-border workers;

To conduct a European discussion on the status of cross-border workers:

7. Invites the European Union to make the status of cross-border workers a subject of the Conference on the Future of Europe, through a dedicated event that is as representative as possible;

8. Invites the European Union to use the open method of coordination in order to find points of consensus on the issue of cross-border workers and populations and to seek harmonisation of the national legislation of the Member States on this subject;

9. Invites the French Government to support any opportunity to launch a dialogue within the European Union or, failing that, multilaterally on the consideration of issues relating to cross-border workers and populations.

Paris, 9 March 2022.

President,

Signed: RICHARD FERRAND



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