



MoveS Webinar “The employment and social security law aspects of cross- border telework”

14 October 2022

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Your host today



Prof. dr. Grega Strban



Prof. Dr. Grega Strban is Full Professor of Labour and Social Security Law at the Faculty of Law University of Ljubljana (UL). He completed a postgraduate specialization of EU law at the University of Cambridge (with distinction), master course on European social security at the KU Leuven (magna cum laude) and defended his doctoral thesis at UL. He conducted research at the Max-Planck Institute for Social Law and Social Policy in Munich, as Stipendiat and a Humboldt Fellow, and is currently an external expert of the Institute. He is President of the Slovenian Association of Labour Law and Social Security, Vice-President of the International Society for Labour and Social Security Law (ISLSSL) and Vice-President of the European Institute of Social Security (EISS). He is active in national and international projects, and he has authored numerous publications.

Agenda



Content	Timeslot	Presenter
Introduction	11:00 – 11:10	Prof. dr. Grega Strban
Labour legislation applicable to international telework : law of the country of the company’s premises versus law of the country of residence	11:10 – 11.40	Prof. dr. Jean-Philippe Lhernould
Social security legislation applicable to cross-border teleworkers: new developments and challenges	11:40 – 12:10	Prof. dr. Dolores Carrascosa Bermejo
Questions and Answers	12:10 – 12.30	ALL
Break	12:30 – 12:40	
Cross-border Telework - comments from the Trade Unions’ perspective	12:40 – 13:10	Dr. Katrin Distler (ETUC)
Market perspective: facilitating remote work – from ensuring compliance to talent enabler	13:10 – 13:20	Mr. Dieter Kuipers
Questions and Answers	13.20 – 13:30	ALL

Housekeeping rules



- **Questions?:**
 - Ask them live during the Q&A sessions
 - Or use the Zoom chat function
 - Before Q&A, participant interaction only via chat
- A **Replay version** of the webcast and the presentation slides will be available after the webcast and will be sent by email

11:00 – 11:10



Introduction to MoveS

EU-wide network
of independent legal experts
in the fields of
free movement of workers (FMW) &
social security coordination (SSC) & Posting

Key facts about MoveS



- Funded by the European Commission (DG EMPL units E1 'FMW' and E2 'SSC')
- 32 countries covered (EU/EEA/CH/UK)
- Implemented by Eftheia, Deloitte, University of Ljubljana, University of Poitiers
- Four-year project (2022-2025)



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- **Legal Reports**
- **Bimonthly Monitoring Reports**
- **Ad hoc requests and comparative assessments**



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MoveS Legal Reports

- 2020 *'The legal status and rights of the family members of EU mobile workers'*
- 2019 *'The application of the social security coordination rules on modern forms of family'*
- 2019 *'The application of free movement of workers and social security coordination rules by national courts' (2020)*
- 2018 *'Social security coordination and non-standard forms of employment and self-employment: Interrelations, challenges and prospects'*
- 2018 *'Consequences and possible solutions in case of lump sum payment of pensions, reimbursement of contributions and waiver of pensions in cross-border situations'*

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- **8 one-day seminars a year**
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- **Audience: Representatives of competent authorities and institutions, social partners, NGOs, judges, lawyers and academics**

Seminars 2022



	Date	Country (City)
1.	March 2022	Portugal(Lisbon)
2.	May 2022	Denmark (Copenhagen)
3.	June 2022	Slovenia (Ljubljana)
4.	June 2022	Belgium(Brussels)
5.	September 2022	Iceland(Reykjavík)
6.	October 2022	Spain(Madrid)
7.	October 2022	Romania(Bucharest)
8.	November 2022	Poland(Warsaw)

	Date	Topic
1.	18/03	Posting of workers: latest developments and prospects in social security and labour law
2.	24/06	Free Movement in the gig economy
3.	14/10	The employment and social security law aspects of cross-border telework

Activities of MoveS



Cooperation and networking

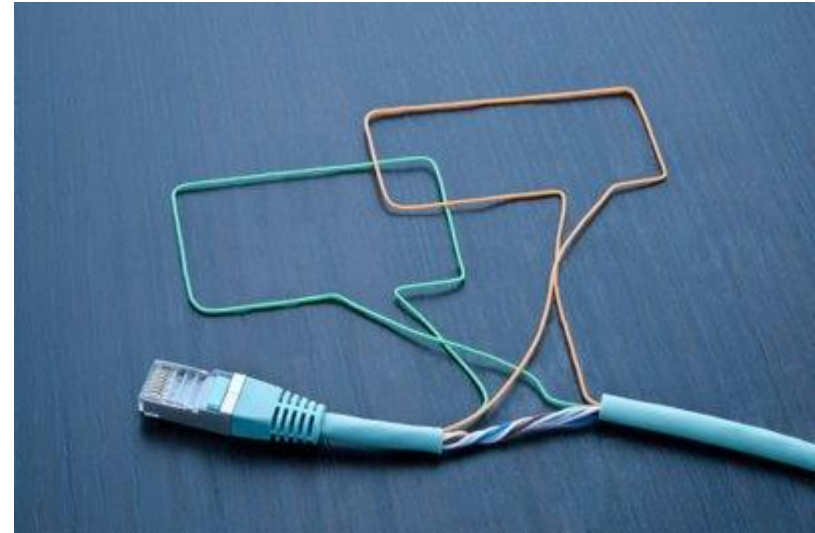
- **MoveS webpage** (EUROPA)

<https://ec.europa.eu/social/main.jsp?catId=1098&langId=en>

- **MoveS LinkedIn group:**

MoveS – free movement and social security coordination

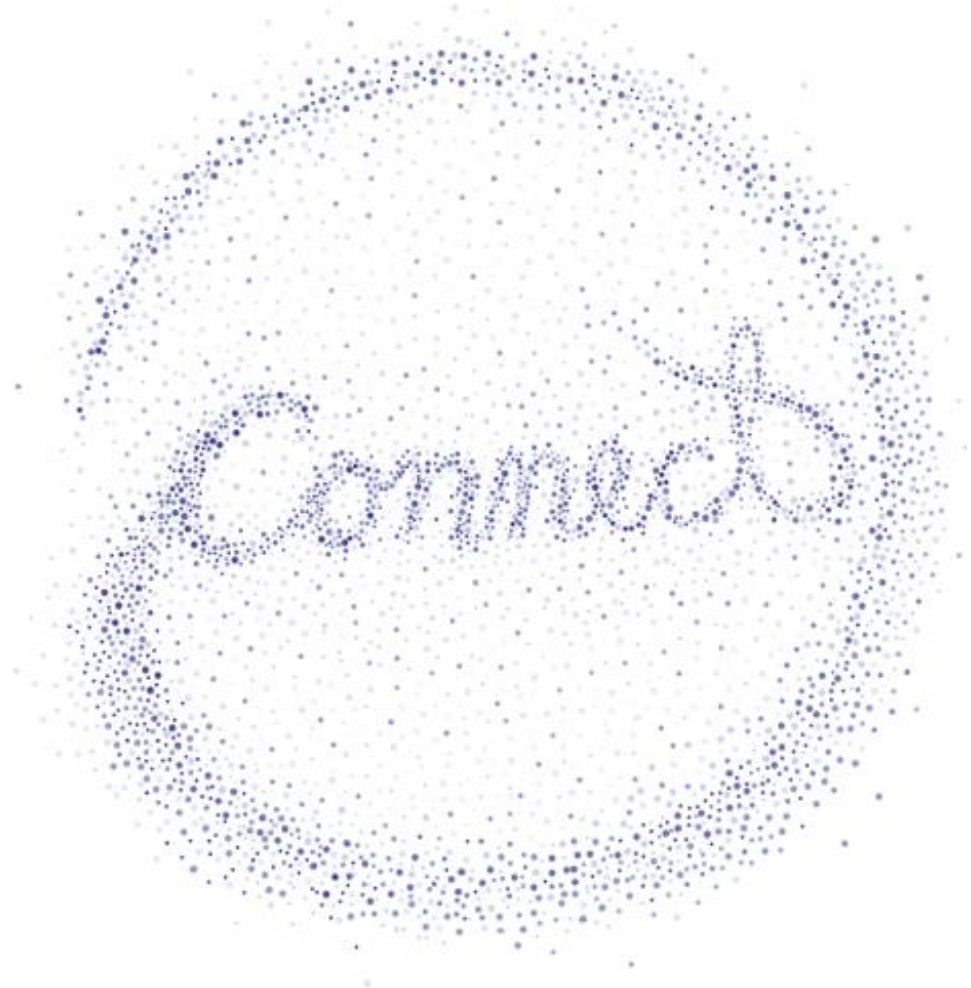
<https://www.linkedin.com/groups/4291726>



Thank you for your attention!

Contact us at:

MoveS@eftheia.eu





The employment and social security law aspects of cross-border telework

Our speakers today



**Jean-Philippe
Lhernould**

Jean-Philippe Lhernould is a Law professor at the University of Poitiers. He is a board member of French and European social law journals. He works as an external expert for the European Commission (DG EMPL).



**Dolores Carrascosa
Bermejo**

Dolores is PhD in Law at Carlos III University since January 2003. She is lecturer in ICADE and UCM (positive assessment as Senior Lecturer by ANECA); researcher (member of many Research Projects) and consultant with more than 20 years' experience. She has worked in different areas related to Labour Law and Social Security, with a Spanish, EU and comparative approach, combining a theoretical and practical background.



Katrin Distler

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Dieter Kuipers

Dieter is a senior manager within Deloitte and has more than 13 years' experience in advising international and Belgian organisations, both public and private, regarding global mobility and remote work policies, in-depth tax advisory, and broader reward aspects. He is focussing on the various dimensions of remote work, from tax, social security and compliance to reward, ESG and technology aspects.



Labour legislation applicable to international telework: law of the country of the company's premises versus law of the country of residence

Prof. dr. Jean-Phillipe Lhernould

Key principles for the determination of the law applicable to employment contracts concluded by teleworkers

Regulation 593/2008 (« Rome I »)

Why is the determination of law applicable crucial for cross-border teleworkers?

- **Traditional labour law issues**

- Which law is applicable for
 - contract conclusion (e.g. type of contract, trial period, ...),
 - contract performance (remuneration, working time, amendments to the contract, health & safety, non competition clauses, ...)
 - contract termination of the cross-border teleworkers

- **Specific issues relating to telework**

- right to disconnect
- privacy
- passage to telework, work equipment,
- equality of treatment with other employees...

Parties are entitled to choose law applicable

- An individual employment contract is governed by **the law chosen by the parties** (art. 8, Reg. 593/2008 "Rome I")
 - Principle applicable to cross-border telework relationship
 - ➔ • F. works for a Spanish company located in Salamanca. She resides near the border in Portugal from where she habitually works remotely from home.
= By agreement between parties, Spanish (or Portuguese) law can apply to the employment contract
 - However, no law may be chosen

The law chosen by the parties: an incomplete answer

- “Such a choice of law may not (...) have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article” (Art. 8(1) Reg. 593/2008).
 - = The contract can **also** be subject to another national law = **principle of proximity = law objectively applicable**
 - = This national law is determined by reference to “**connecting factors**” set out in Article 8(2) to 8(4)

➔ If F., who works for a Spanish company located in Salamanca and resides near the border in Portugal from where she habitually works remotely from home, is subject by agreement to Spanish law, the employment contract could also be subject to the law of Portugal (if law objectively applicable)

Effect of the law objectively applicable

- The objectively applicable law applies either
 - in addition to the law chosen by the parties for its provisions
 - Mandatory provisions (“non derogable by agreement”)
 - and more protective than the law chosen (Art. 8(1), Rome I)

Or if no law has been chosen by parties

- governs entirely the employment relationship

Effect of the law objectively applicable

➔ F. works for a Spanish company located in Salamanca. She resides near the border in Portugal from where she habitually works remotely. The contract is subject by agreement between parties to Spanish law.

The contract is terminated by the employer.

Portuguese law will apply to the dismissal if:

- Portuguese law is objectively applicable
- AND is more protective than Spanish law

Application of the law objectively applicable

- Article 8, Rome I sets out 3 “connecting factors” with a hierarchy between a) and b)
 - a. The law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract (**lex loci laboris**)
 - b. The law of the country where the place of business through which the employee was engaged is situated (**Law of the place of engagement**)
 - c. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in a) and b), the law of that other country shall apply (“**escape clause**”)

Question: should a cross-border teleworker be subject to the law of the country where he works, where he has been engaged or (in another country) where the contract is more closely connected?

a) Law objectively applicable: Where is the teleworkers' workplace?

Application of the national law of the teleworker's workplace? (in addition to the law chosen)

Case 1: occasional cross-border telework

- Occasional telework (e.g., during pandemic) **should not affect the identification of workplace**

- The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country (art. 8(2))
- =The workplace remains at the company's premises

➔ = Z habitually works in Spain. For 6 months during the pandemic, he worked full-time from home (France). Whether or not his employment contract stipulates that Spanish law is applicable, Spanish law should govern the contract.

Case 2: stable cross-border telework

- Uneasy to identify the workplace based on the hints developed by the CJEU:
 - Search of a “significant link”
 - “in order to determine the meaning of the words 'place ... where the employee habitually carries out his work' (...) in a case where the employee carries out his work in more than one Contracting State, the Court's previous case-law must be taken into account when determining the place with which the dispute has **the most significant link**, while taking due account of the concern to afford proper protection to the employee as the weaker party to the contract (case C-383/95, Rutten)
 - Search of the place where obligations are principally discharged
 - “Where the work entrusted to the employee is performed in the territory of more than one Contracting State, it is important to define the place of performance of the contractual obligation, (...) as being the place **where or from which the employee principally discharges his obligations** towards his employer (case C-125/92, Mulox).

Case 2: stable cross-border telework

- Where is the teleworker's place of work? Other hints:
 - "refer to the place where the employee has established **the effective centre of his working activities and where, or from which, he in fact performs the essential part** of his duties *vis-à-vis* his employer" (Rutten)
 - "the place where **the employee actually performs the work** covered by the contract with his employer" (Rutten)
 - the relevant criterion for establishing an employee's habitual place of work (...) is, in principle, the place **where he spends most of his working time** engaged on his employer's business (C-37/00, Weber)

Case 2: stable cross-border telework

- **If only remote work**

- Law applicable should be that of country of home = habitual workplace (see case law + wording of Art. 8(2) : "from which")

➔ Z is employed by an Italian company. She works exclusively and permanently from home in Croatia.
= Croatian law should be applicable to the employment contract (in addition to the law chosen by parties, if any)

- **If mix of remote work/ on-site work**

- Solution may depend on the proportion between remote work and on-site work

➔ Z is employed by an Italian company. She works from home in Croatia 4 days / week. She goes to Roma every Friday.
= Croatian law should be applicable (in addition to the Italian law, if chosen by parties)
: most of working time in Croatia

Case 2: stable cross-border telework

Conclusion: scenarios are multiple !


- To know which national law(s) is applicable it is necessary to
 - Identify the workplace: home or company's premises?
 - Take into account the fact that parties may have chosen a law

In the end, the teleworker may be subject only to the law of the company's premises, or only to the law from where telework is performed, or to both!

b) Objective law: If no workplace can be identified, can the contract be governed by the law of the place of engagement?

Application of the law of the country where teleworker has been engaged? (in addition to the law chosen by the parties)

Unlikely situation for telework

- 
- The criterion of the country in which the employee 'habitually carries out his work' (...) must be broadly construed, whereas the criterion of 'the place of business through which [the employee] was engaged' (...) **can apply only in cases where the court hearing the case is not in a position to determine the country in which the work is habitually carried out**
 - Connecting factor **unlikely to apply for** cross-border telework since Court should always be able to find a workplace

c) Objective law: Can the employment contract be more closely connected to the company's premises?

Application of the law of the country where the teleworkers' employment contract is more closely connected? (in addition to the law chosen by the parties)

Application of the “escape clause”

- “among the significant factors suggestive of a connection with a particular country, account should be taken in particular of the country in which the employee pays taxes on the income from his activity and the country in which he is covered by a social security scheme and pension, sickness insurance and invalidity schemes.
- In addition, the national court must also take account of all the circumstances of the case, such as the parameters relating to salary determination and other working conditions” (Case C-64/12, Schlecker)
- The search for the closest link “must not automatically result in the application, in all cases, of the law most favourable to the worker” (Schlecker).

Application of the “escape clause”

- Even if workplace is at home, could the place where the company is located be that of the closest connection?
 - Place where employee has been hired, place of key meetings, trainings, HR events (promotion interviews, sanctions, dismissal...), place of work community = centre of gravity of relationship?
 - Place of social security affiliation / tax?
 - If so, would prevail over the criterion of habitual workplace
- Could this “closer connection” prevail over the workplace connecting factor?
 - ➔ P, a Belgian citizen, works remotely for a Belgian company. She has an office at her residence in Vilnius and works in the Baltic countries. The employment contract provides the application of BE law. She remains insured for social security in BE where she goes once a month. She is paid from there and gets instructions from there as well. P may go back to work in Belgium in 2024.
 - Is the contract more closely connected with Belgium (therefore disregarding the law of Lithuania which seems to be the actual workplace)?

Overriding mandatory provisions...

Irrespective of the law applicable on the basis of the conflict of law, Should teleworkers be subject to the « overriding mandatory provisions » of the law of the country of telework?

Definition

- What are “**Overriding mandatory provisions**”?
 - Provisions “the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation”
 - Health & safety, right to strike & collective actions, criminal employment law, immigration law ...
- A teleworker working from home may have to comply with overriding mandatory provisions of that country, irrespective of the law applicable to the employment contract!

Conclusion

- Many **uncertainties in practice** for cross-border teleworkers
 - Has a law been chosen by the parties to govern the employment contract?
 - Irrespective of the question above, how to identify the law objectively applicable?
 - Where is the workplace?
 - Is there a closer connection with the company's premises?
 - Is the law objectively applicable « more protective » than the law chosen by the parties?
- What are the mandatory provisions and to what extent should they apply to cross-border teleworkers?

Thank you for your attention!

Our speakers today



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11:40 – 12:10



Social security legislation applicable to cross-border teleworkers: new developments and challenges

Prof. dr. Dolores Carrascosa Bermejo

1. Introduction

- Increased by Covid-19 but **not a new problem**
- **No specific conflict rule** for telework
- **AC Guidance Note** May 2020 → disregard pandemic telework until end June 2022 (*force majeure*). [ELA report](#)
- Since July 2022 until 2023 → **common & flexible interpretation** for specific type of **cross-border telework** employee
- **Preliminary ideas**
 1. AC guidance notes are **not legally binding**
 2. AC **working group**: different interpretation?
 3. No statistics: magnitude? Ad-hoc **ticking box** in PDA1?
 4. Not envisaged in amendment of Coord. Reg.
 5. New **framework agreement** on telework (labor)

2. Index

1. Common **cross-border telework situations**
2. Common **conflict rules (Title II)**: general rule *lex loci lab.*
3. **Exceptions** - posting rule (Art. 12)
 - multistate rule (Art. 13)
 - + MS agreement (Art. 16.1)

Main goals & characteristics of EU conflict rules

<i>unicity principle</i>	<i>exclusive effect</i>
<i>binding</i>	<i>indirect</i>
<i>predictability</i>	<i>stability</i>

3. Types of telework

Before 2020 → marginal remote working, virtual assignments & **interactive telework**

AC Guidance note July 2022 → first definition of **cross-border telework**

- **Voluntary:** agreed btw employer and employee
- Performed **outside the employer's premises** (*where the same work is normally carried out*)
- In a different Member State
- Using **information technology to remain connected** to the employer's or business working environment to fulfil the tasks assigned by the employer

Currently: hybrid telework, employees request to telework, digital nomads and *teleworkation*

What social security legislation should apply in each case?

4. *Lex loci laboris* for a teleworker

Person residing in Spain teleworking for a French company

- **Option A.** Current interpretation: LLL = **place of telework** (SPAIN)
 - Case C-137/11, **Partena** (concept of work location)
 - Location of **professional activity:** place where the person carries out actions connected with activity (typing??)
 - If telework location is not fixed: can be **anywhere?**
- **Option B.** Possible new interpretation? LLL= **enterprise** (FRANCE)
 - Location of **everything else:** activity organization, laptop, training, supervision, payment and final work.
 - **Fixed location** (predictability, unicity, stability...) / equal treatment + easier social security management / not hinder free movement/ company assets
 - Additional requirements to **prevent fraud:** actual company with substantial activity
 - **Benefits:** persons residing in a different member state where they work (healthcare, unemployment...)

5. Hybrid worker: Art. 13

Person working 3 d/w in-person in FRANCE and teleworking 2 d/w remotely in SPAIN where s/he resides?

- **Option A: multistate rule applies** (habitual + non marginal). Insurance in **MS of residence with substantial activity** (SPAIN). Rule of the 25% of time or salary.

* **AC Guidance Note June 2022:** Flexible approach 25% just an indicator in an overall assessment considering future 12 months. No effect on the local labor market

Problem: different teleworking conditions between local employees (2/3 days) and cross-border employee (1 day max). Indirect discrimination on the grounds of nationality?

- **Option B: multistate rule does not apply** (we consider teleworking means that the person is working in FRANCE). Insurance in **MS of the company** (FRANCE).

6. *Teleworkation*: Art. 12

Belgian employee enjoys three weeks of *teleworkation* in Spain

- **Option A:** AC Guidance Note June 2022 recommends to **issue PDA1 Art. 12**. Are **posting** requirements fulfilled?
 - Employer established in Belgium? **YES**
 - Employment relationship during posting? **YES**
 - Employee pursuing activity on behalf of an employer? ~
 - Anticipated duration under 24 months? ~
 - Replacement of another posted worker? ~

* Providing services not necessary ≠ PWD. Is there an undertaker in Spain? What is the activity during posting?

** **Guidance Note examples:** Partial renovation of the company's offices; Conciliation measures (for taking care of someone); To focus on a specific project; To extend the holiday stay...

.- If the situation is not clear: Art. 16
- **Option B:** Law of the place of business goes on being applied during *teleworkation*

7. Agreements: Art. 16

Possibilities envisaged in Guidance Note June 2022

1. Bilateral **individual** agreement (case by case **via EESSI-system**)
2. **Bilateral** agreement for a specific group of persons (company's employees; frontier workers...)
3. **Multilateral** agreement for a specific group of persons (more than 2 MS)
4. **EU wide agreement** on applicable parameters (AC recommendation + national competent authorities)

Transparent procedure and clear personal scope of application

Agreements **in the interest & with the consent** of persons concerned. Individuals can **opt-out of group agreements**

Criteria agreed: family reasons; people with disabilities

8. Conclusions

Uncertainty around telework + difficult to change current rules

What is the right interpretation of the ***lex loci laboris***:

A. **Physical** *lex loci laboris* in home telework = ***lex loci domicilii***

- But where is the **residence** (Article 11 IR/new criteria)?
- No **equal treatment** among employees and human resources management nightmare?
- Does it enhance **social dumping**?
- * AC Guidance Note provides a practical solution, but with limited legal certainty

B. **Virtual** *lex loci laboris* = **MS company** (or fictitious place of work?)

- Requires an amendment of the current conflict rules?
- Fixed location / equal treatment / local social security / stability / unicity / not hinder free movement/company assets

We will always have **Article 16 agreements ...**

Thank you for your attention!

12:10 – 12.30



Questions and Answers

Break

12:30 – 12:40

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12:40 – 13:10



Cross-border telework and social security coordination – Practical experiences and comments from the Trade Unions' perspective

Dr. Katrin Distler

46 IRTUCs: Interregional Trade Unions' Councils

One of IRTUCs' tasks:
support of the cross-
border workers in the
respective cross-border
region

14.10.2022



Aspects of Cross-border Mobility

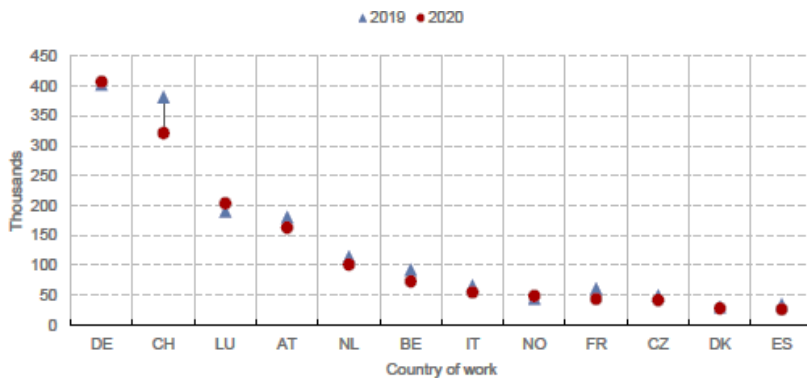
- ▶ Working permit – access to the labour market
 - ▶ Recognition of professional qualification
 - ▶ Labour Law
 - ▶ **Social Security**
 - ▶ Taxation
-
- ▶ Article 45 TFEU: Freedom of movement for workers within the EU shall entail the abolition of any discrimination
 - ▶ Article 4 EC-Regulation 883/2004 (coordination of social security systems): principle of equal treatment

Status as Frontier Worker in Social Security

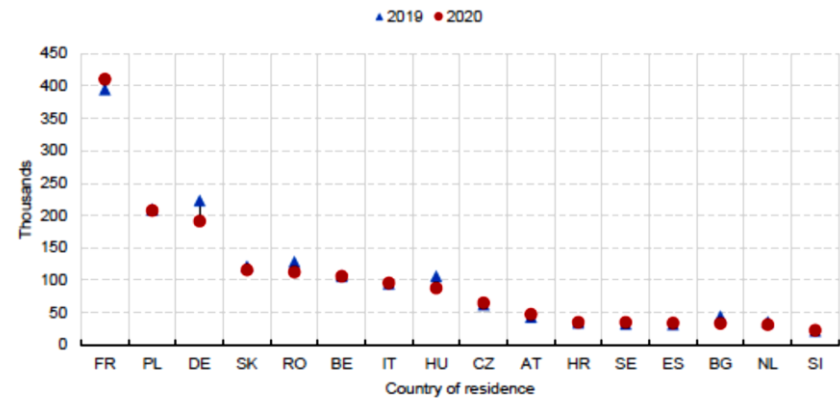
Legal Basis	Regulation (EC) 883/2004: Coordination of Social Security Systems
Scope of application	Member States of EU + EFTA
Frequency of Border Crossing	Daily, at least once per week [Art. 1f EC-R. 883/2004]
Geographical Conditions	Country of residence and country of professional activity must be a Member State of EU/EFTA
Competent State	State of professional activity [Art. 11(3)a EC-R. 883/2004]; sometimes right to additional benefits in the country of residence

EU-27/EFTA Cross-border Workers aged 20-64, 2019-2020

Incoming / Country of Work



Outgoing / Country of Residence



Numbers include EU-27 and EFTA citizens.

Source: Eurostat, EU-LFS, specific extractions, Milieu calculations.

“Cross-border workers”: On average in 2020, ca. 1.5 million EU or EFTA citizens who live in one EU or EFTA country and work in another and move across borders more or less regularly.

Source: “Annual Report on Intra-EU Labour Mobility 2021” by the European Commission

Social Security in case of Telework of Cross-border Workers

- ▶ Main principle: *lex loci laboris* (Art. 11 of EC-R. 883/2004)
- ▶ Exemption Posting (Art.12 of EC-R. 883/2004)
- ▶ Exemption Pluriactivity (Art.13 of EC-R. 883/2004): the cross-border worker is pursuing a part of his/her working time in his/her country of residence (“homeoffice” – telework)

EC-Regulation 883/2004, Article 13(1):

A person who normally pursues an activity as an employed person in two or more Member States shall be subject:

(a) to the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State;

or

(b) if he/she does not pursue a substantial part of his/her activity in the Member State of residence:

(i) to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or employer

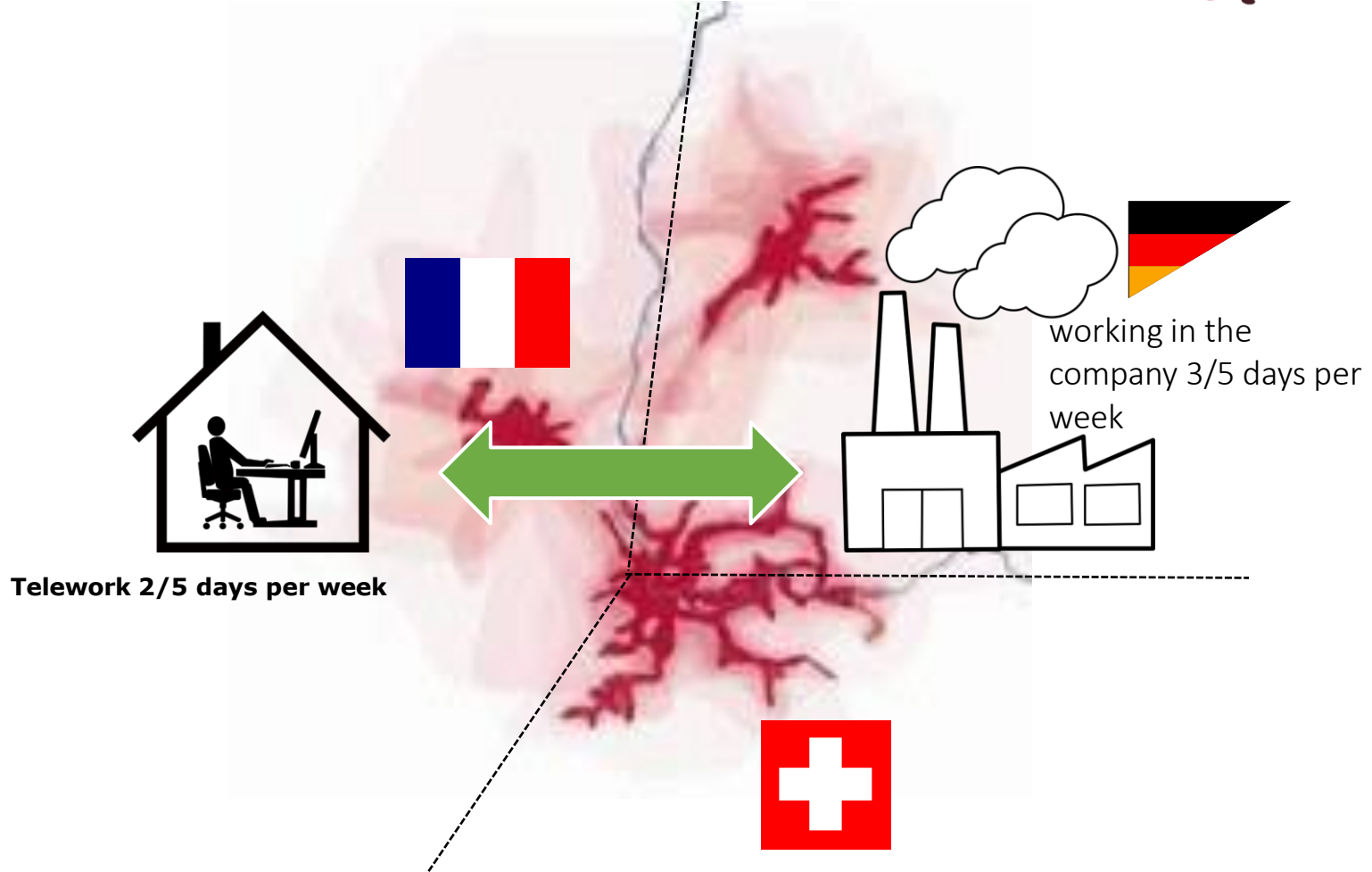
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EC-Regulation 987/2009, Art.14(8):

A share of less than 25% of the working time and/or the remuneration is an indicator that it is not a substantial activity.

Example: telework 2/5 days per week

- ▶ **Practical observation:** In many companies, agreements are made that allow workers to telework 2 days per week (= 40% of the working time)
- ▶ 40% > 25%: substantial activity in the country of residence
- ▶ Competent social security system switches from employer's MS to MS of residence of employee
- ▶ The change from one social security system to another means in particular:
 - ▶ The employer must register in and pay contributions to a foreign social security system
 - ▶ The employer may have language problems in communicating with the foreign social security authorities
 - ▶ Knowledge of the details of the foreign social security system is necessary: The various branches of social security, the amount of social security contributions, the conditions for the right to social security benefits (e.g. statutory pension age), ... differ from MS to MS



Social Security Contributions in DE & FR

Social Security Contributions 2022 Risk	Employee		Employer	
	DE	FR	DE	FR
Health insurance – DE: upper limit 4,837.50€, FR: total earnings	7.3%	0.0%	7.3%	13% or 7%
DE: allocation for continued payment in case of sickness	0.0%	-	0.9% - 4.2%	-
DE: allocation for maternity expenses	0.0%	-	0.29% - 1.79%	-
DE: long term care insurance – FR: autonomy solidarity contribution	1.525%	0.0%	1.525%	0.3%
- DE: insured person 23 years or older and without children	+0.35%	-	0.0%	-
Old age insurance				
- with upper limit DE: 7,050€, FR: 3,428€	9.3%	6.9%	9.3%	8.55%
- FR: total earnings	-	0.4%	-	1.9%
Accidents at work	0.0%	0.0%	variable	variable
FR: family benefits	-	0.0%	-	5.25% or 3.45%
FR: social security surcharge	-	9.2%	-	0.0%
FR: social security debt reimbursement	-	0.5%	-	0.0%
Unemployment - upper limit: DE: 7,050€, FR: 13,712€	1.2%	0.0%	1.2%	4.05%
Wage guarantee insurance, e.g. in case of receivership	0.0%	0.0%	0.12%	0.15%
France: Compulsory Supplementary Pensions				
- Bracket 1 - upper limit 3,428€	-	3.15%	-	4.72%
- CEG: overall balance contribution (limit 3,428€)	-	0.86%	-	1.29%
- Bracket 2: from 3,428 to 27,424€	-	8.64%	-	12.95%
- CEG: overall balance contribution from 3,428€ to 27,424€	-	1.08%	-	1.62%

In total, contributions to DE social security system < contributions to FR social security system

EC-R. 883/2004, Art.16(1): Exemptions to Art.11-15

- ▶ **Possible solution** so that the social security system of the employer's MS remains applicable despite the cross-border worker carries out telework of 25% or more: Exemptions according to EC-R. 883/2004, Art.16(1):
 - ▶ Two or more Member States, the competent authorities of these Member States or the bodies designated by these authorities
 - ▶ may by *common agreement* provide for exceptions to Articles 11 to 15
 - ▶ *in the interest of certain persons or categories of persons.*
- ▶ **Comments:**
 - ▶ *Procedures of agreements between the competent Member States involved should be transparent and respect the principle of equal treatment.*
 - ▶ *A person concerned who would fall into this category should have the possibility to opt out from these agreements.*

Taxation of Cross-border Telework

- ▶ Many tax conventions are based on the OECD model, but no EU-wide uniform regulations, just bilateral tax conventions between 2 MS
- ▶ The respective tax conventions must be checked to see in which MS the cross-border employee has to pay taxes. It is possible that he/she will have to pay taxes in both MS, in relation to the time worked there.
- ▶ Risk that the Tax Authority of MS of residence considers the cross-border teleworkers' private home as a permanent establishment of the employer. In this case, the employers would be forced to calculate the part of their profits derived by the work of their cross-border teleworkers resident abroad.
- ▶ *More information: Opinion by the European Economic and Social Committee on "Taxation of cross-border teleworkers and their employers"*

Summary and Conclusions

- ▶ The Trade Unions strongly support the European principle of workplace regarding labour law, social security and taxes.
- ▶ Risk that the principle of workplace will put cross-border workers at a disadvantage if they want to do part of their work in their home office in the MS of residence.
- ▶ Practical observation (no accusation!): Cross-border telework means a high additional administrative burden for employers and may sometimes cause additional costs, e.g.:
 - ▶ higher social security contributions in MS of employee's residence
 - ▶ Risk of (additional) taxes for the employer because the cross-border worker's home office is regarded as a permanent establishment of the employer
- ▶ The (potential) employers' refusal of cross-border telework contravenes the European principle of non-discrimination.
- ▶ We should resolve the contradiction between the principles of workplace and of equal treatment regarding cross-border telework. – Thank you very much!

Thank you for your attention!

Our speakers today



Jean-Philippe Lhernould

Jean-Philippe Lhernould is a Law professor at the University of Poitiers. He is a board member of French and European social law journals. He works as an external expert for the European Commission (DG EMPL).



Dolores Carrascosa Bermejo

Dolores is PhD in Law at Carlos III University since January 2003. She is lecturer in ICADE and UCM (positive assessment as Senior Lecturer by ANECA); researcher (member of many Research Projects) and consultant with more than 20 years' experience. She has worked in different areas related to Labour Law and Social Security, with a Spanish, EU and comparative approach, combining a theoretical and practical background.



Katrin Distler

Katrin Distler is currently president of ETUC's Coordination Committee of the Interregional Trade Union Councils (IRTUC) and since 2004 EURES adviser at the Franco-German-Swiss EURES Cross Border Partnership for the Upper Rhine.



Dieter Kuipers

Dieter is a senior manager within Deloitte and has more than 13 years' experience in advising international and Belgian organisations, both public and private, regarding global mobility and remote work policies, in-depth tax advisory, and broader reward aspects. He is focussing on the various dimensions of remote work, from tax, social security and compliance to reward, ESG and technology aspects.

13:10 – 13:20

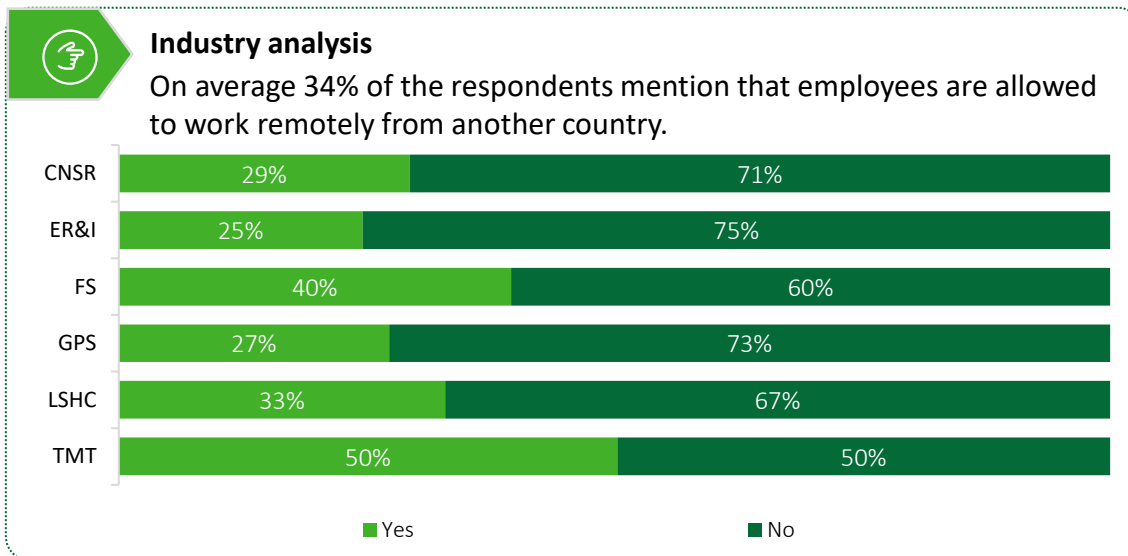
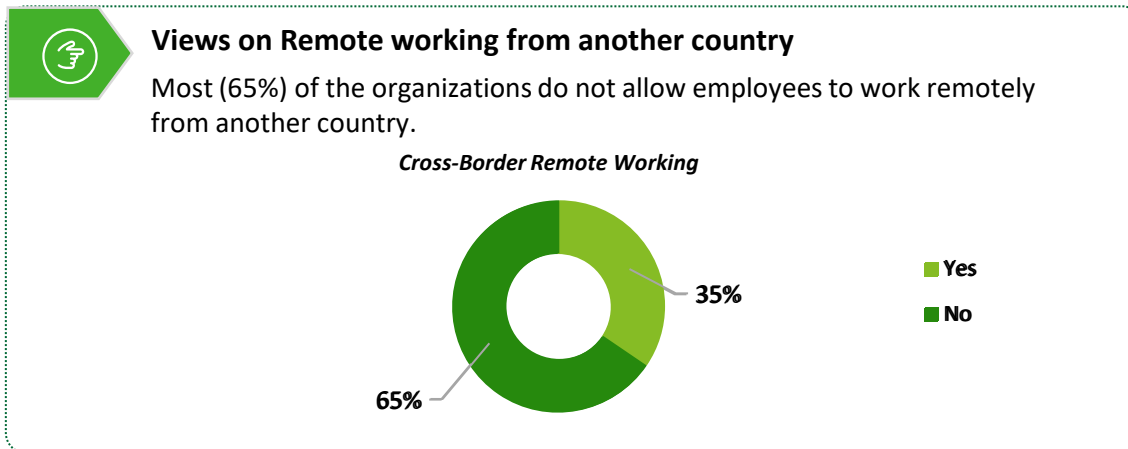


Market perspective: facilitating remote work – from ensuring compliance to talent enabler

Mr. Dieter Kuipers

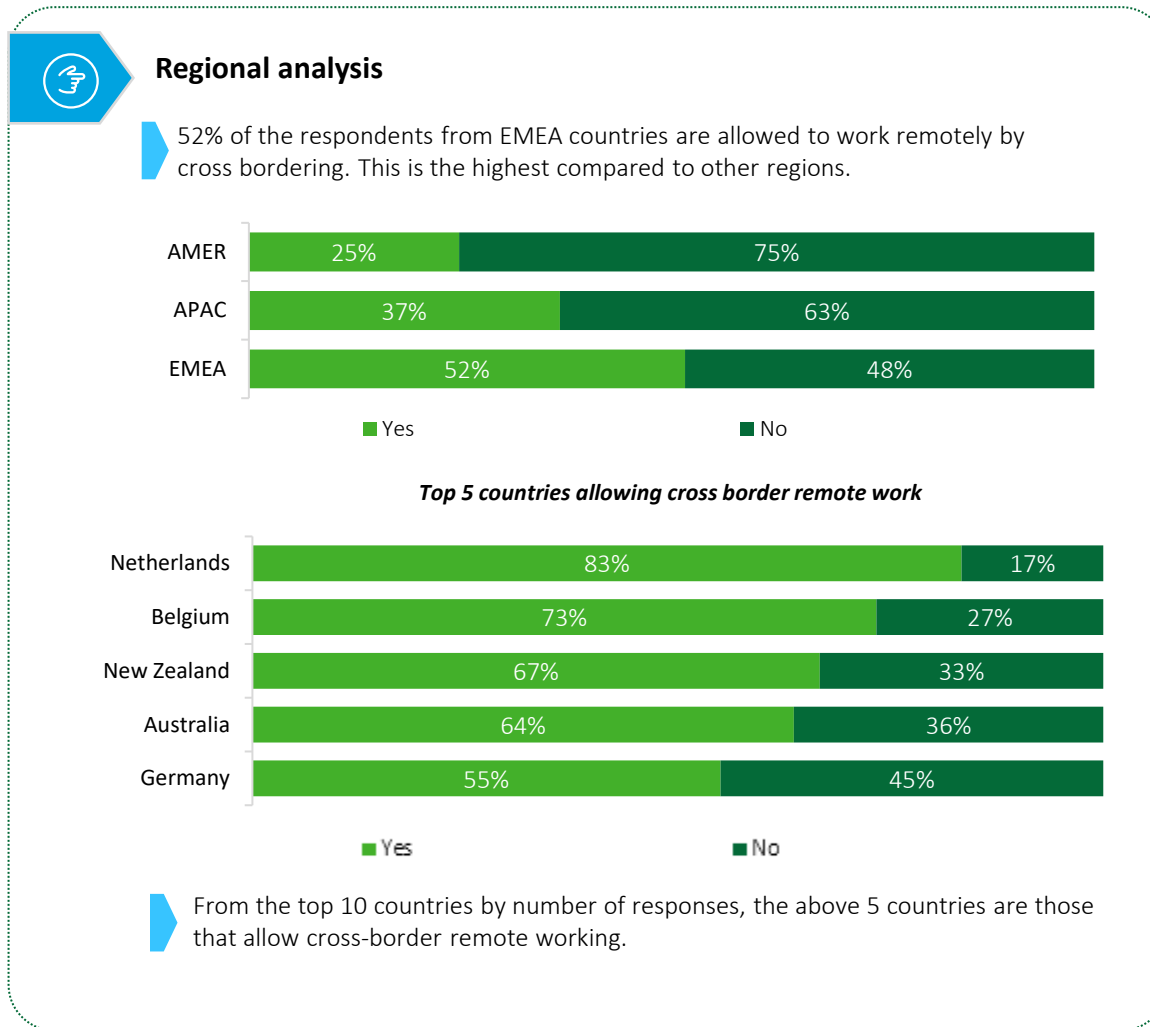
Current landscape

65% of organizations do not allow remote working outside the country



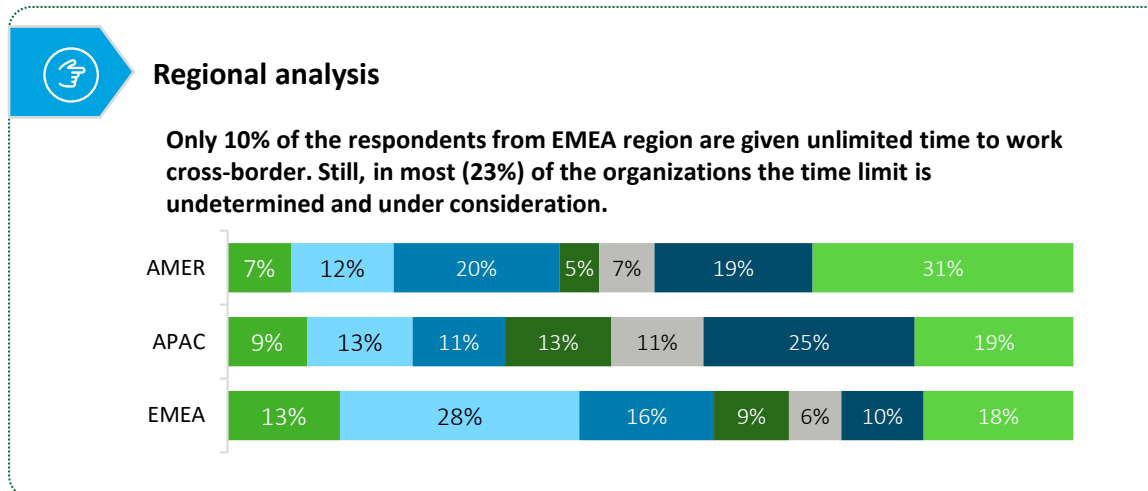
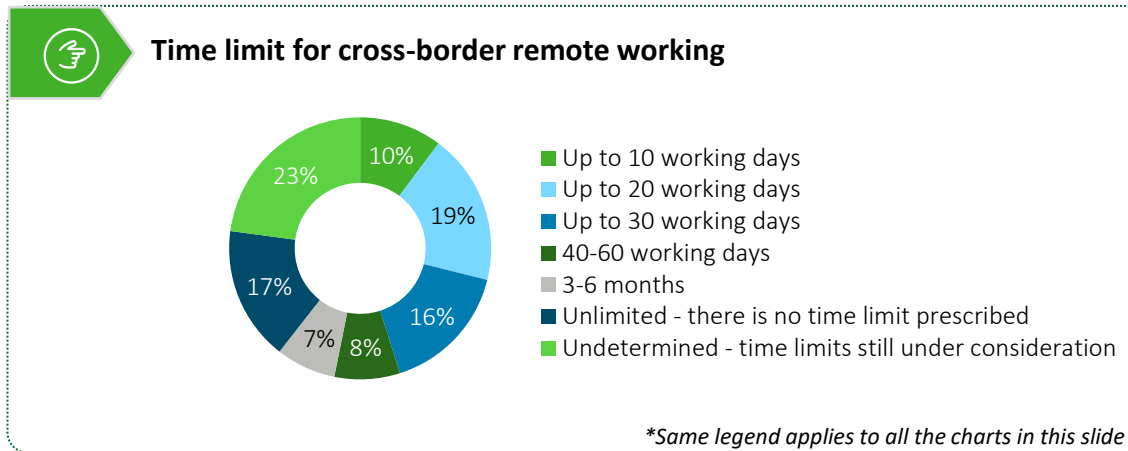
Current landscape

EMEA is more liberal in terms of encouraging cross border remote working with **52% allowing employees** to work from another country



Current landscape

- 17% organizations have no time limit prescribed as per their policy; 45% organizations levy anywhere between **10-30 working days restriction** for cross border remote working.





Managing compliance

HOW COULD **ONE** EMPLOYEE DISRUPT THE BUSINESS?




Enabling talent


 **40%** of the global workforce is **considering leaving their employer**


 **73%** are more likely to stay if their employer will **support remote working moving forward**


Short term assignments, Business Travel and Remote Work has always happened, however ...

... consider what else is changed

 Self-requests and hence volumes

 Tax Authority Scrutiny

 Immigration complexity

 ESG – Reputation, fairness & DEI

 Need for flexibility & resilience

*Percentage of responses from company representatives at the global Deloitte GES Conference in November 2021. Company representatives were asked to comment on which policy type best described their organisation's approach now and what they expected it to be in future.

Enabling talent

Remote work is a cross-functional effort. It requires resilient leaders across enabling functions to evolve the organization's approach.

CORPORATE TAX

- Domestic and international corporate tax implications
- Permanent establishment risk
- Intercompany agreements & transfer pricing considerations
- Eligibility matrix : triage & exclusions

EMPLOYMENT TAX

- Employment tax and social security assessments
- Income tax withholding and filing requirements
- Entity and payroll registration requirements
- Income and payroll tax reporting and cost projections

DATA / TECHNOLOGY

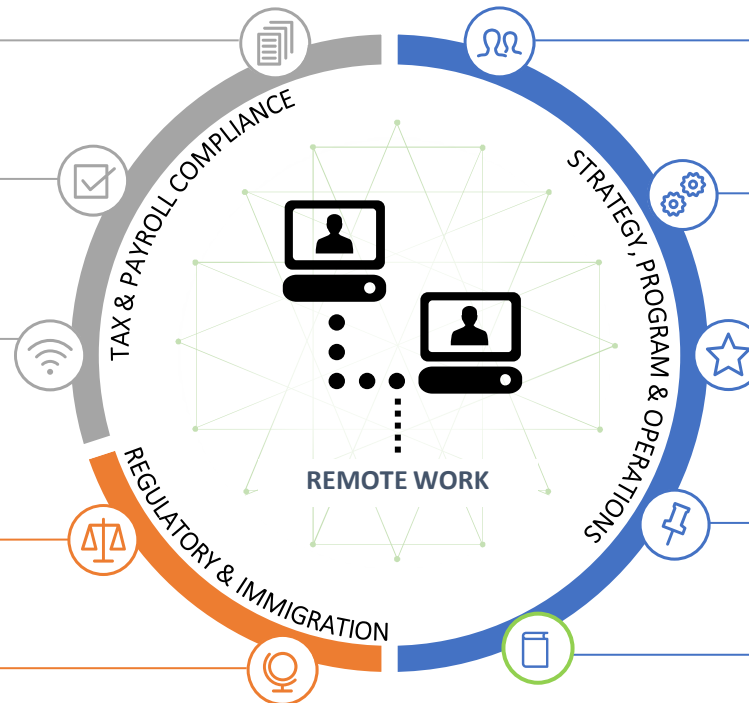
- Continuous data tracking and reporting
- Compliance analysis
- Flagging and quantification of risks
- Business travel tracking
- Approval process for remote working and tracking

REGULATORY / WORKFORCE CONSIDERATIONS

- Communicate relevant policies to remote workers
- Remote workforce expenses

IMMIGRATION

- Assessing right to work remotely from a particular location
- Visas and work authorization impacts



WORKFORCE STRATEGIES

- Enterprise philosophy and strategy
- Workforce segmentation and job profile analysis
- High-performance team in a virtual environment

PROGRAM & OPERATIONS

- Remote Policies and guidelines
- Roles and responsibilities, processes, and tools
- Mapping key remote working scenarios
- Employee and stakeholder communications

REWARDS

- Compensation and benefits design and implementation
- Benchmarking
- Pension considerations
- Cross-border equity considerations

EMPLOYMENT MODEL

- Intercompany agreements & transfer pricing considerations

LEARNING

- Virtual learning model
- Identification of knowledge gaps

13.20 – 13:30



Questions and Answers

**Thank you for your
attention!**



MoveS Webinar **“The employment and social security law aspects of cross- border telework”**

14 October 2022

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