



Policy Paper

NAVIGATING THE DIGITAL WORKFORCE FRONTIER

How can we leverage the free
movement of labour in a digitalising
single market?

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Content

- 1. Introduction 3
- 2. Cross-border remote work is still difficult..... 4
- 3. Telework regulation is not (yet) a priority 5
 - 3.1. Wait and see: awaiting the popularity of the Framework Agreement..... 5
 - 3.2. A first insight into the demand for Cross-border telework among Czech employers..... 7
- 4. Making the social security, tax and labour law framework fit for the digital age..... 9
 - 4.1. The Hornets’ nest of social security coordination 9
 - 4.1.1. Complexity and abuse, avenues for social security coordination... 10
 - 4.1.2. Leveraging Digital Solutions 11
 - 4.2. Recognised but unaddressed: Taxation as a major obstacle to telework...13
 - 4.2.1. Pathways to Solutions 15
 - 4.2.2. Towards a better coordination of taxation and social security..... 17
 - 4.3. Labour law fit for the digital era 19
- 5. Conclusion..... 20
- 6. Recommendations..... 23
- 7. References 25



1. Introduction

Since the Pandemic, telework (allowing employees to carry out their duties and responsibilities from an offsite location other than the official workplace) has surged and is gradually becoming an integral part of the work and expectation pattern. **Telework provides more flexibility, contributes to cost reduction when fewer employees come to the office**, and companies increasingly use the option to have a competitive advantage when hiring talent¹. Almost 1 in 4 employees in the EU worked sometimes or usually from home in 2023², and almost 75% of workers want to continue teleworking at least several times per month³. However, while teleworking within member states is relatively easy, cross-border remote work poses multiple administrative obstacles, costs, and uncertainties to both the employees and the employer, particularly for SMEs.

With teleworking becoming increasingly prevalent, new opportunities and new obstacles are arising, and tax, social security, and labour laws based on physical presence might need an update. To get an overview of the challenges and solutions for cross-border telework, this policy paper will examine how the EU should adapt to leverage the free movement of labour in a digitalising Single Market. Firstly, this article will dive into why remote work is still difficult. Secondly, it will explore why regulating telework is not yet a priority. Finally, the article will explore how tax law, social security coordination rules and labour law could be adjusted to the era of digital work.

¹ Interviewee 6, Advisor general, National Office for Social Security (RSZ/ONSS) - Dept. for International Relations and rapporteur Ad Hoc group on cross-border telework, 12.01.2023, online

² Eurostat, "Employed Persons Working from Home as a Percentage of the Total Employment, by Sex, Age and Professional Status (%)."

³ Bruurs, "Cross-Border Telework in Light of the Rome I-Regulation and the Posting of Workers Directive."

2. Cross-border remote work is still difficult

A company interested in allowing cross-border telework - **fully remote, hybrid or for workcations**

– faces many questions: Does it need to set up a formal subsidiary? Which tax rules apply – the rules of the country of employment or the residence country? Do the two member states have bilateral agreements on double taxation? Are social security contributions paid in the same country as taxation? What are the thresholds for substantive activity in the case the employee works from several member states, and what labour law applies in that situation?⁴ The administrative problems and complexities of cross-border activities are not new. However, the increasing recourse to telework has further exacerbated those challenges⁵.

In the field of social security, contributions are regularly paid in the wrong country due to the complexity and lack of easily accessible information⁶. In the field of taxation, compliance costs amount to 2% of taxes paid for MNEs while accounting for 30% of taxes paid for SMEs⁷. Moreover, by hiring hybrid or remote employees, companies risk creating a **Permanent Establishment (PE)**, dividing the corporate income into two locations with different filing obligations. Moreover, calculating the tax bill is difficult, as determining value creation by the employee is often ambiguous⁸. Meanwhile, **employees risk double taxation on their**

The complexity of the current framework causes significant administrative and financial burdens for companies, especially for SMEs.

⁴ European Digital Forum, “The 2016 Startup Nation Scoreboard.”

⁵ European Parliament, “Report on Further Reform of Corporate Taxation Rules (2022/2146(INI)) Committee on Economic and Monetary Affairs.”

⁶ Interviewee 6, Advisor general, National Office for Social Security (RSZ/ONSS) - Dept. for International Relations and rapporteur Ad Hoc group on cross-border telework, 12.01.2023, online

⁷ European Parliament, “Report on Further Reform of Corporate Taxation Rules (2022/2146(INI)) Committee on Economic and Monetary Affairs.”

⁸ EESC, “Taxation Rules on Cross-Border Teleworking Must Be Updated and Simplified.”; Andersson, “Taxation of Cross-Border Teleworkers Globally and the Impact on the EU.”; De Ridder, Nurksi, and Schraepen, “Cross-Border Telework in the EU: Fab or Fad?”

income, as member states employ different criteria to determine tax residence status, and depending on the country, they might have to fill out two separate declarations⁹.

The administrative burdens and uncertainty are “a drag on the development of telework”¹⁰. In addition, the complexities of navigating the intertwining tax and social security¹¹ undermine the level playing field in the single market, imposing a disproportionate burden on SMEs¹². Many (young) start-ups find their way around this costly administrative hornets’ nest by hiring talent as external self-employed consultants¹³. However, in a labour market increasingly flexible¹⁴, these risks creating an additional push into self-employment with limited protection¹⁵.

3. Telework regulation is not (yet) a priority

3.1. Wait and see: awaiting the popularity of the Framework Agreement

Despite the growing popularity of telework, regulating cross-border telework is not (yet) a priority at the EU level¹⁶. Nevertheless, some action was taken in the summer of 2023 by the Ad Hoc Group on telework. Faced with a clear demand for more flexibility from frontier workers and their employers in the wake

⁹ Paulander and Raedler, “Public Hearing: Taxation of Cross-Border Teleworkers.”

¹⁰ EESC, “Taxation Rules on Cross-Border Teleworking Must Be Updated and Simplified.”

¹¹ and to a lesser extent labour law issues

¹² European Parliament, “Report on Further Reform of Corporate Taxation Rules (2022/2146(INI)) Committee on Economic and Monetary Affairs.”

¹³ European Digital Forum, “The 2016 Startup Nation Scoreboard.”

¹⁴ Including with the rise of platform work

¹⁵ Soler, “The ‘Digital Frontier Worker’, a Response to Address EU Labour Shortages.”

¹⁶ Beyond prioritisation, other factors have contributed to the limited regulatory steps taken so far, including the complexity of social security coordination and tax legislation, which will be further discussed in the next sections.

of the Pandemic, the Framework Agreement (FA)¹⁷ – to be signed by interested Member states - raised the threshold from 24,9% to 49,9% of working time without social security repercussions¹⁸. While the agreement provides a Band-Aid solution to the most pressing issues, considerable gaps remain.

The Ad Hoc group on telework - created by the Administrative Commission to deal with the thorny issue - lacks legislative power and is thus limited to making an interpretation within the existing rules¹⁹. A more permanent solution, making cross-border telework easier and more accessible - including for significant telework - will require a new regulation²⁰. However, with the concerns of the largest and best-organised stakeholder group of frontier workers satisfied, the sense

of urgency has waned, and work in the Ad Hoc group tasked with proposing future rules has come to a standstill²¹. More than six months after the FA was signed, the group has not convened once²². In addition, no new rapporteur has been found to carry on the work. The fact that it concerns complex and unpaid work on top of their regular duties may be a contributing factor.

Meanwhile, **EU legislators take a cautious stance and await** the popularity of the FA before assessing whether further regulation is needed. A representative from DG EMPL argued that if a substantial number of people will actually work

¹⁷ "Framework Agreement on the Application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of Habitual Cross-Border Telework."

¹⁸ The Ad Hoc group unanimously agreed that telework may fall under the concept of posting, allowing for temporary, fully remote work and workcations. Furthermore, the Framework Agreement, signed by 22 countries, provides a solution for hybrid work, raising the threshold from 24,9% to 49,9% of working time without social security repercussions.

¹⁹ Based on article 16 of Regulation (EC) No 883/2004 on social security coordination, which allows for exceptions to the set rules in the interest of the workers.

²⁰ Or an amendment of the existing regulation

²¹ Interviewee 6, Advisor general, National Office for Social Security (RSZ/ONSS) - Dept. for International Relations and rapporteur Ad Hoc group on cross-border telework, 12.01.2023, online

²² Interviewee 6, Advisor general, National Office for Social Security (RSZ/ONSS) - Dept. for International Relations and rapporteur Ad Hoc group on cross-border telework, 12.01.2023, online

under the new arrangement, further adjustments to social security rules may be considered²³. Meanwhile, it was added that in light of the difficult negotiations and the constraints imposed by the social security coordination rules, the Commission will focus on piecemeal adjustments, especially in view of the still rather small group of cross-border teleworkers²⁴.

Given the limited number of cross-border workers and the few applications under the FA so far, it is tempting to adopt a wait-and-see attitude. However, it would be misguided to assess the demand for cross-border telework (fully remote, hybrid or workcations) based on the number of applications alone. The telework agreement does not address taxation issues, and with the possibility of residing in another member state for up to three months without registration, a considerable amount of cross-border telework goes below the radar²⁵. Therefore, instead of using the FA as a proxy to measure interest in cross-border telework, a **better way to assess the need for further regulation** is through an independent study of the demand for cross-border telework^{26,27}.

3.2. A first insight into the demand for Cross-border telework among Czech employers

A preliminary study on demand for cross-border **remote work in the Czech Republic**, an industrial country where telework and teleworkable frontier work are under the EU average,²⁸ provided interesting results. In total, 15,1% of companies surveyed would be interested in using cross-border telework

²³ Interviewee 2, DG EMPL, 12.12.2023, online

²⁴ Interviewee 2, DG EMPL, 12.12.2023, online

²⁵ Interviewee 3, DG EMPL, 20.20. 2023, online

²⁶ Kahancová and Williams, "The Rise of Teleworking: Improvements in Legislation and Challenges for Tackling Undeclared Work Output Paper from the Plenary Thematic Discussion."

²⁷ The Sense and Nonsense of Regulating Cross-Border Telework, 8.03.2024, Ambiorix Library, Brussels, Belgium

²⁸ Data source: the Czech Chamber of Commerce; Chamber Barometr; Spring

if obstacles in the area of taxation and social security were removed²⁹. For large companies, this percentage was even higher, reaching 35,7%³⁰. In SMEs, small businesses, and micro companies, the rates were lower, accounting for 20%, 17,6% and 4,7%, respectively. Enterprises focusing on services for businesses and Production in the processing industry were the most favourable, reaching 23,8% and 21,5%, respectively, whereas construction and personal services reached 14,1% and 12,5%, respectively³¹.

Unexpectedly, of the companies favourable to cross-border telework, 53% reported being interested in employing remote working agreements full-time and for any suitable position. Another 18% of employers indicated they are interested in full-time telework for key positions. The same number expressed a preference for part-time telework for all suitable positions. Finally, 10% preferred part-time telework for key positions only³². While the analysis is only preliminary, it sheds a first light on the demand for remote cross-border work. **More comprehensive research should assess the actual demand for telework across the EU.** This could be done either through surveys or by comparing the uptake of domestic telework with cross-border telework, providing an indication of the hurdles in the current framework³³. The next part of this paper will examine how these regulatory burdens can be addressed.

If an independent study finds sufficient demand for cross-border telework (fully remote, hybrid or workcations), legislative action should be taken to ease the regulatory burdens in social security, taxation and labour law.

²⁹ Data source: the Czech Chamber of Commerce; Chamber Barometr; Spring

³⁰ Data source: the Czech Chamber of Commerce; Chamber Barometr; Spring

³¹ Data source: the Czech Chamber of Commerce; Chamber Barometr; Spring

³² Data source: the Czech Chamber of Commerce; Chamber Barometr; Spring

³³ Interviewee 6, Advisor general, National Office for Social Security (RSZ/ONSS) - Dept. for International Relations and rapporteur Ad Hoc group on cross-border telework, 12.01.2023, online; Interviewee 2, DG EMPL, 12.12.2023, online

4. Making the social security, tax and labour law framework fit for the digital age

4.1. The Hornets' nest of social security coordination

To ease the burden employees and employers face when teleworking across national borders, legislators should tackle issues in the fields of social security, taxation and labour law. Firstly, **current EU social security rules³⁴ do not sufficiently take into account new forms of employment, such as part-time, temporary or remote work³⁵**. When employees telework from home or in a summerhouse in another country on a regular basis, they risk becoming subject to the social security regime of that state³⁶, or experiencing gaps in social protection when they move³⁷. This is because member states have exclusive responsibility over their national social security systems (including benefits provided, the conditions for eligibility, how these benefits are calculated and what contributions should be paid)³⁸.

Finding an agreement that is acceptable for all countries is difficult, balancing the rights of EU citizens to free movement and the interests of member states as coordination of social security inevitably creates winners and losers³⁹. Firstly, some member states (Belgium, Luxembourg, the Netherlands and France) have more cross-border workers than others. There is also a difference in the level

³⁴ Under EU rules governed by regulations (EC) No883/2004 and No 987/2009, a person can only be covered by one country's social security system at a time, meaning they pay contributions there. Typically, this is the country where they physically work, whether employed or self-employed. It does not matter where the person lives (for example, if they commute) or where their employer is located; contributions are owed in the country of work. An exception applies for workers who are posted for less than 2 years.

³⁵ "EZA: 60 Years of Social Security Coordination from a Workers' Perspective."

³⁶ This is due to the state of employment principle (lex loci laboris). In other words, the place of work is where the laptop is physically located.

³⁷ The latter is a risk for any type of cross-border work in the EU.

³⁸ Golynger, "EU Coordination of Social Security from the Point of View of EU Integration Theory."

³⁹ Interviewee 3, DG EMPL, 20.12. 2023, online

of digitalization and the extent to which a country's main economic sectors are teleworkable. Lastly, some countries - mainly popular European holiday destinations - fear they might become resident countries, which have to foresee social provisions (education for the family members, health insurance) while not reaping the financial benefits⁴⁰. The fact that not all countries have signed⁴¹ the FA gives an indication of how difficult reaching a broad-based consensus might be.

4.1.1. Complexity and abuse, avenues for social security coordination

Beyond finding agreement, there is fear among policymakers that regulation facilitating cross-border telework might add to the complexity of social security regulation (create legal uncertainty) or further amplify existing problems, such as letterbox companies⁴². One possible avenue for regulation could consist of a **legal fiction**, which presumes that the employee works in the country of the employer, regardless of where the employee is physically located. The non-linking of the actual place of work and employment is also used in aviation and shipping personnel, where the work is "deemed to be done in the home base"⁴³. The option provides a straightforward solution in an era when the link between work and a particular place is becoming less relevant⁴⁴. In addition, unlike today, it would not make administration more complex if an employee regularly moves countries.

However, the legal fiction option, while proposed on several occasions, is also prone to abuse, **risking that companies will relocate to countries where**

⁴⁰ Interviewee 3, DG EMPL, 20.20. 2023, online

⁴¹ As of September 2024, over 75% of EU/EFTA countries have signed the FA.

⁴² Letterbox companies are firms set up with the intention of circumventing legal and conventional obligations including taxation, social security, VAT and wages.

⁴³ Jorens, "Cross-border EU Employment and its Enforcement".; For more information, see Article 11(5) of Regulation (EC) No 883/2004.

⁴⁴ Jorens, "Cross-border EU Employment and its Enforcement".

social security contributions are lower⁴⁵. The interviews revealed that the fear of **“optimization tactics”** or **“social security shopping”** presents one of the main obstacles to finding a solution to cross-border telework⁴⁶. Other possibilities are more cumbersome and further risk adding to the complexities of the social security coordination rules. However, in an interview with representatives of the Czech Chamber of Commerce, it was emphasised that employers are favourable to telework solutions on the condition that it does not provide new obligations⁴⁷. Moving forward, **it is crucial that work in the Administrative Commission continues and explores ways to integrate telework into the legislative framework without adding unnecessary complications or leaving room for misuse, all while ensuring clarity and stability in the legal framework throughout the process**⁴⁸.

4.1.2. Leveraging Digital Solutions

Regardless of which option is chosen, a new social security regulation⁴⁹ adapted to the new digital reality of cross-border work will take time, and a perfect solution might not even exist. Therefore, it is useful to help workers and employers navigate the current regulatory landscape so as to reduce the administrative burden as much as possible. “Lack of access to reliable information is the most elementary barrier for enterprises to do business and employ personnel across borders”⁵⁰. As articulated by a social security expert interviewed, the first step is

⁴⁵ Interviewee 6, Advisor general, National Office for Social Security (RSZ/ONSS) - Dept. for International Relations and rapporteur Ad Hoc group on cross-border telework, 12.01.2023, online

⁴⁶ Interviewee 2, DG EMPL, 12.12.2023, online; Interviewee 3, DG EMPL, 20.12. 2023, online

⁴⁷ Interviewee 4, Czech Chamber of Commerce, Employment and Labour Market Section, 9.01.2023, Prague; Interviewee 5, Czech Chamber of Commerce, Employment and Labour Market Section 9.01.2023, Prague

⁴⁸ Interviewee 1, Law Faculty, Department of Labour Law and Social Security, Charles University, 12.12.2023, online

⁴⁹ Or an amended regulation

⁵⁰ Pelkmans, “Empowering the Single Market - a 10-Point Plan to Revive and Deepen It.”

to make sure that employers and employees know their rights so that they can actually enjoy the rights that they currently have⁵¹.

To this end, **the smart use of digital tools can provide new opportunities to simplify information gathering and reporting on telework**. In the past two decades, the EU has been striving to simplify access to information⁵² and lower the (administrative) cost of cross-border work through digital tools. However, due to incomplete information, diversity in setup structure, language barriers, and under-investment, online tools like the Points of Single Contact (PSC) have never been a success⁵³.

The new Single Digital Gateway (SDG), launched in 2018, is more ambitious. Both literature⁵⁴ and experts in the field of social security⁵⁵ have expressed great hope that the SDG -whose core infrastructure was launched in December 2023⁵⁶ - will help businesses and employees move across borders. The SDG will provide access to information on administrative procedures and assistance services⁵⁷. Accessible through one website, it could become a true one-stop shop (of EU help in services), enabling businesses to “notify and request permission for business activity, register and end employer and employee for pension and social security, pay social security contributions for employees, and declare corporate tax”⁵⁸.

⁵¹ Interviewee 1, Law Faculty, Department of Labour Law and Social Security, Charles University, 12.12.2023, online.

⁵² Employers looking for information on cross-border telework can visit the [“Your Europe” website](#) and the EMPL web pages.

⁵³ Pelkmans, “Empowering the Single Market - a 10-Point Plan to Revive and Deepen It.”

⁵⁴ Pelkmans.

⁵⁵ The Sense and Nonsense of Regulating Cross-Border Telework, 8.03.2024, Ambiorix Library, Brussels, Belgium

⁵⁶ “Explanatory Memorandum to COM(2023)534 - First Implementation Report on the Single Digital Gateway - EU Monitor.”

⁵⁷ European Commission, “Single Digital Gateway - European Commission.”

⁵⁸ Pelkmans, “Empowering the Single Market - a 10-Point Plan to Revive and Deepen It.”

According to estimates from the Commission, the SDG could lower the administrative barrier and reduce the costs for companies by as much as 11 billion per year and boost cross-border activity⁵⁹. In addition, it would cater to the wishes of businesses that do not wish to deal with foreign social security instances⁶⁰. While it is not yet possible to fully assess the effectiveness of the SDG⁶¹, business representatives are optimistic regarding the possibilities provided by digitalisation to simplify working with employees from abroad⁶². In the years to come, it is crucial that new initiatives like **the Single Digital Gateway** are properly funded, provide watertight and complete information, and are properly promoted among businesses and workers throughout Europe.

4.2. Recognised but unaddressed: Taxation as a major obstacle to telework

In an interview, representatives from the **Czech Chamber of Commerce** pointed to tax issues as the biggest hurdle to the uptake of telework⁶³. Yet, while social security issues are being addressed (though imperfectly), the tax framework for cross-border telework, in particular, lags behind⁶⁴.

⁵⁹ European Commission, "Single Digital Gateway - European Commission."

⁶⁰ Interviewee 4, Czech Chamber of Commerce, Employment and Labour Market Section, 9.01.2023, Prague; Interviewee 5, Czech Chamber of Commerce, Employment and Labour Market Section 9.01.2023, Prague

⁶¹ Scot Marcus, "Digital Aspects of the EU Single Market.>"; Pelckmans, "Empowering the Single Market - CEPS."

⁶² Interviewee 4, Czech Chamber of Commerce, Employment and Labour Market Section, 9.01.2023, Prague; Interviewee 5, Czech Chamber of Commerce, Employment and Labour Market Section 9.01.2023, Prague

⁶³ Interviewee 4, Czech Chamber of Commerce, Employment and Labour Market Section, 9.01.2023, Prague; Interviewee 5, Czech Chamber of Commerce, Employment and Labour Market Section 9.01.2023, Prague

⁶⁴ Jacquet, "Virtual Workforce, Real Consequences."

Tax rules for cross-border teleworkers rely on **double taxation treaties (DTTs)** between the countries involved⁶⁵. The current system incurs high compliance costs for both employers and employees, as well as tax administrations. Employees may lose tax benefits, and the distribution of taxing rights can have an impact on the overall tax burden⁶⁶. In addition, countries sometimes disagree on how to split taxable income, resulting in double taxation and long and costly court cases⁶⁷. Lastly, bilateral treaties on cross-border work only exist between neighbouring states⁶⁸. In an online labour market, on the other hand, cross-border work is not limited to neighbouring countries. A Czech employee can now easily work from the Spanish Mediterranean coast. This, in turn, could potentially result in 26x27 bilateral deals⁶⁹.

Besides social security, taxation forms a major obstacle for cross-border teleworkers.

Cross-border telework can also have an impact on **corporate taxation**⁷⁰. Companies risk PE⁷¹ and division of corporate income in two locations subject to different tax liabilities⁷². Employers fearing to accidentally create PE may decide not to allow telework⁷³. The Czech Chamber of Commerce pointed to tax issues

⁶⁵ Jacquet.

⁶⁶ EESC, "Taxation Rules on Cross-Border Teleworking Must Be Updated and Simplified."; European Parliament, "Notice to Members- Subject: Petition No 0349/2023 by M. H. (German) on Removing Tax and Social Security Barriers to EU-Wide Telework and Remote Working."

⁶⁷ European Parliament, "EU Economic Governance from a Parliamentary Perspective - Background Note Interparliamentary Committee Meetings (in Parallel) Committee on Economic and Monetary Affairs."

⁶⁸ De Ridder, Nurksi, and Schraepen, "Cross-Border Telework in the EU: Fab or Fad?"

⁶⁹ De Ridder, Nurksi, and Schraepen.

⁷⁰ European Parliament, "EU Economic Governance from a Parliamentary Perspective - Background Note Interparliamentary Committee Meetings (in Parallel) Committee on Economic and Monetary Affairs."

⁷¹ The employee's home office is considered a fixed place of business

⁷² EESC, "Taxation Rules on Cross-Border Teleworking Must Be Updated and Simplified."

⁷³ European Parliament, "EU Economic Governance from a Parliamentary Perspective - Background Note Interparliamentary Committee Meetings (in Parallel) Committee on Economic and Monetary Affairs."

as the biggest hurdle to the development of telework⁷⁴. Meanwhile, the European Economic and Social Committee (EESC) concludes in a report that the administrative burden and uncertainty “are a drag on the proper development of teleworking in the EU, and the Single Market”⁷⁵.

Tax challenges for people working across borders in the EU are not new.

Already in 2010, experts suggested setting up a simple reporting system for employees⁷⁶. However, the increasing recourse to telework has further exacerbated this problem⁷⁷. Against the Backdrop of the Pandemic, the European Parliament issued a resolution in 2022, calling for the “need to redefine tax residency for individuals in light of new working arrangements such as telework”⁷⁸. Similarly, the Euroregions between the Netherlands, Belgium and Germany wrote to their finance ministers to obtain a European fiscal framework to facilitate telework⁷⁹. Finally, the Benelux interparliamentary assembly, the French assemble Nationale, as well as the German Bundestag also issued recommendations and petitions to adapt the taxation frameworks to accommodate cross-border telework⁸⁰.

4.2.1. Pathways to Solutions

One way to reduce complexities can be by **introducing tolerance thresholds in bilateral double taxation treaties**, allowing for a certain number of telework

⁷⁴ Interviewee 4, Czech Chamber of Commerce, Employment and Labour Market Section, 9.01.2023, Prague; Interviewee 5, Czech Chamber of Commerce, Employment and Labour Market Section 9.01.2023, Prague

⁷⁵ Pelkmans, “Empowering the Single Market - a 10-Point Plan to Revive and Deepen It.”; EESC, “Taxation Rules on Cross-Border Teleworking Must Be Updated and Simplified.”

⁷⁶ European Parliament, “EU Economic Governance from a Parliamentary Perspective - Background Note Interparliamentary Committee Meetings (in Parallel) Committee on Economic and Monetary Affairs.”

⁷⁷ European Parliament, “Report on Further Reform of Corporate Taxation Rules (2022/2146(INI)) Committee on Economic and Monetary Affairs.”

⁷⁸ European Parliament, “Texts Adopted - Fair and Simple Taxation Supporting the Recovery Strategy - Thursday, 10 March 2022.”

⁷⁹ Labro, “Les Euroregions appellent l’Europe à se saisir du télétravail.”

⁸⁰ Paulander and Raedler, “Public Hearing: Taxation of Cross-Border Teleworkers.”

days without tax repercussions. Several member states have taken this approach. For example, the threshold in Luxemburg accounts for 19 days of remote work in Germany, 34 days in Belgium and 29 days in France, respectively⁸¹. A recent agreement between France and Switzerland, signed in 2023, even set the threshold for telework at 40% (96 workdays full-time)⁸².

A more far-reaching solution would consist of introducing a one-stop shop (similar to the one established in the area of VAT) so that employees and employers face only one tax administration⁸³. In turn, tax authorities could use this information to assess in which country income is taxable and how the taxable income should be distributed⁸⁴. In an opinion, the EESC argues that such a system would not only make compliance easier but also be crucial to combating tax evasion⁸⁵. Given that the residence country provides public services like health care and education, a revenue-sharing mechanism can be set up to compensate for the loss of revenue. Several options are possible, drawing either on data on the actual presence (reported by the employer to tax authority) or by using a macroeconomic aggregate key⁸⁶.

This principle has already been applied in a French-Swiss agreement. Cross-border telework for less than 40% of working time remotely will not affect the worker's tax situation. Income will be taxed in the country of the employer (e.g. Switzerland), while the country of residence (e.g. France) will be compensated for the revenue loss through a revenue sharing mechanism (accounting for 3,5%

⁸¹ European Parliament, "EU Economic Governance from a Parliamentary Perspective - Background Note Interparliamentary Committee Meetings (in Parallel) Committee on Economic and Monetary Affairs."

⁸² Petition No 0349/2023 by M. H. (German) on removing tax and social security barriers to EU-wide telework and remote working

⁸³ Andersson, "Taxation of Cross-Border Teleworkers and Their Employers."

⁸⁴ Andersson.

⁸⁵ Andersson.

⁸⁶ Andersson.

of tax revenue)⁸⁷. Meanwhile, a similar multilateral agreement, also including a revenue-sharing mechanism, is being discussed by the Nordic Council⁸⁸.

In theory, similar action could be taken at the EU level⁸⁹. **A more structural solution at the international level for cross-border workers is to be preferred over bilateral agreements**, which will contribute to simplicity and benefit coherence and level playing field in the single market. Member states with many frontier workers have expressed strong interest in discussing a workable solution⁹⁰. However, given the unanimity requirement, this is unlikely to happen in the short term⁹¹. The next European Commission should investigate if a more unified approach at the EU level should be considered to prevent fragmentation.

Alternatively, EU action could help facilitate cross-border tax compliance by **increasing the alignment of tax declaration forms**⁹². In an interview, a professor of social security law argued that the coordination of social security and tax issues is hardened by the fact that the tax issues are not unified between themselves⁹³. In addition, as in the case of social security, the EU could work on increasing easy access through digital tools⁹⁴.

4.2.2. Towards a better coordination of taxation and social security

In addition to the administratively complex taxation and social security rules, the lack of coordination between the two poses significant challenges for cross-border teleworkers. While social security follows the principle of single

⁸⁷ Andersson.

⁸⁸ Andersson.

⁸⁹ European Parliament, "Notice to Members- Subject: Petition No 0349/2023 by M. H. (German) on Removing Tax and Social Security Barriers to EU-Wide Telework and Remote Working."

⁹⁰ European Parliament.

⁹¹ European Parliament.

⁹² European Commission, "Commission Expert Group 'Platform for Tax Governance' - Tax in an Increasingly Mobile Environment: Challenges and Opportunities."

⁹³ Interviewee 1, Law Faculty, Department of Labour Law and Social Security, Charles University, 12.12.2023, online

⁹⁴ European Commission, "Commission Expert Group 'Platform for Tax Governance' - Tax in an Increasingly Mobile Environment: Challenges and Opportunities."

national legislation, the approach is fundamentally different for taxation, which relies on the division of income taxation between the teleworker's country of residence and activity⁹⁵. This creates a complex structure for Czech cross-border teleworkers, who must navigate at least two criteria: the number of days spent in another state (tax) and the percentage of the employee's working time spent (social security)⁹⁶. In an interview, a professor in social security from Charles University pointed to the non-coordination of tax and social security law as a major obstacle for cross-border telework and argued that a better alignment of social security and tax issues – meaning that employers must effectively adhere to one criterion - should be strived towards⁹⁷.

Also, within the European Parliament, the issue of the non-coordination of social security and taxation was raised. In two written questions to the Commission, MEPs pointed out the inconsistencies between social security coordination regulation and the nearly 600 double-income taxation treaties between the Member states⁹⁸. In their question, the MEPs urged the Commission to **set up a working group of taxation and social security experts** to “recommend ways of improving coordination and ensuring greater consistency between the allocation provisions of the double taxation treaties and the corresponding provisions of Regulation (EC) No 883/2004”⁹⁹. This could be a good place to start, which would benefit not only cross-border teleworkers but also the entire realm

⁹⁵ Jacquet, “Virtual Workforce, Real Consequences.”

⁹⁶ Interviewee 1, Law Faculty, Department of Labour Law and Social Security, Charles University, 12.12.2023, online

⁹⁷ Interviewee 1, Law Faculty, Department of Labour Law and Social Security, Charles University, 12.12.2023, online

⁹⁸ Lenaers and Peeters, “Parliamentary Question | Inconsistency between Council Regulation (EC) No 883/2004 and Double Taxation Treaties | E-003241/2020 | European Parliament.”; Franssen and Lenaers, “Parliamentary Question | Follow-up Question on Teleworking for Cross-Border Workers | E-001580/2022 | European Parliament.”

⁹⁹ Lenaers and Peeters, “Parliamentary Question | Inconsistency between Council Regulation (EC) No 883/2004 and Double Taxation Treaties | E-003241/2020 | European Parliament.”

of cross-border work. Additionally, an expert on social security¹⁰⁰ argued in an interview that while there will probably always be a certain discrepancy between social security rules and tax rules, every step towards unification would be great. Discussions on a de-minimis limit on income tax aligned with the social security threshold (allowing for one telework day a week) could be a possible course of action¹⁰¹.

4.3. Labour law fit for the digital era

Finally, when EU legislators decide to address the current telework provisions, attention will need to be paid to labour law and to upholding decent working conditions. **In a cross-border context, in particular, the lack of transparency or available information, as well as insufficient cooperation of enforcement authorities (with tax authorities and employment registries), make telework prone to un(der)declared work¹⁰².** Cross-border cooperation in this area is only emerging¹⁰³. To tackle un-declared and under-declared work, enforcement authorities could consider inspecting software and digital traces, or possibly even digital registers of working time, instead of on-site inspections¹⁰⁴.

More generally, the uptake of telework risks blurring the boundaries between work and personal life, with teleworkers often finding themselves working during free time. A Eurofound survey found that people who regularly telework “are six times more likely to work in their free time and twice as likely to work 48 hours”¹⁰⁵.

¹⁰⁰ Interviewee 1, Law Faculty, Department of Labour Law and Social Security, Charles University, 12.12.2023, online

¹⁰¹ Paulander and Raedler, “Public Hearing: Taxation of Cross-Border Teleworkers.”

¹⁰² Kahancová and Williams, “The Rise of Teleworking: Improvements in Legislation and Challenges for Tackling Undeclared Work Output Paper from the Plenary Thematic Discussion.”

¹⁰³ Kahancová and Williams.

¹⁰⁴ Kahancová and Williams.

¹⁰⁵ Eurofound, “Working during COVID-19.”

Moreover, there are concerns about the monitoring of remote employees, including the opaque use of surveillance and monitoring technologies to measure performance¹⁰⁶. Social partners have taken initiative to address these issues at the EU level. However, after a year of discussions, negotiations to establish minimum rules on telework broke down in November 2023¹⁰⁷. Eyes now turn to the European Commission to propose a **Directive on Telework**¹⁰⁸, which has been supported for over three years by the European Parliament and social partners¹⁰⁹. This directive should enshrine the right to disconnect and limit remote working. The involvement of trade unions, including through collective bargaining, will be key to finding fair and balanced solutions¹¹⁰.

5. Conclusion

The rapid uptake of telework since the Pandemic is yet another manifestation of the transforming nature of work. Remote work offers more flexibility and broader access to talent, and in 2023, almost one in four employees in the EU worked sometimes or usually from home¹¹¹. However, cross-border remote work, whether fully remote, hybrid or for workcations, remains difficult. The current legislative framework in taxation, social security and labour law is based on physical presence, and not adapted to telework. This results in significant administrative and financial obstacles, particularly for SMEs, and puts strain on the completion of a Single Market. While a first important step has been taken to

¹⁰⁶ Mariniello et al., "Blending the Physical and Virtual."

¹⁰⁷ EPSU, "European Employers Pull the Plug on Telework Negotiations, Feeding the Narrative of the Far-Right."

¹⁰⁸ Eurogip, "Teleworking and the Right to Disconnect."

¹⁰⁹ Canas, "Parliamentary Question | Commission Follow-up Action in Response to Parliament's Call for a Directive on Teleworking | E-000999/2023 | European Parliament."

¹¹⁰ Trindade, "Défis du télétravail."

¹¹¹ 13,3% sometimes worked from home, and 22,1% usually worked from home. See: Eurostat, "Employed Persons Working from Home as a Percentage of the Total Employment, by Sex, Age and Professional Status (%)."

accommodate cross-border telework through **the Framework Agreement**, it falls short of a comprehensive solution.

Moving forward, there is a need for an independent study looking into the demand for cross-border telework to assess the extent of reforms needed. A preliminary study among Czech employers¹¹² shows surprising results. **While Czechia is not a telework country**, 15,1% of companies surveyed expressed interest in using cross-border telework if obstacles in the area of social security and tax were removed, half of which for full-time and for any suitable position¹¹³. An in-depth and EU-wide study on the demand and economic impact should be conducted to explore this issue further.

In addition, legislators face the difficult task of integrating cross-border telework into the social security framework without adding unnecessary complications or leaving room for misuse while ensuring legal certainty throughout the process. With rapid digitalisation, smart use of digital tools, such as the Single Digital Gateway, can simplify information gathering and reporting of telework. However, proper funding, promotion, and accessibility of these tools are crucial to their success. In the field of taxation, the introduction of tolerance thresholds in bilateral DTCs, a better alignment of tax declaration forms, or even a one-stop shop (similar to the one established in the area of VAT) could help reduce the complexities. Furthermore, efforts should be made to better coordinate social security and taxation.

Finally, it is crucial to ensure the sustainable development of new forms of work into the future. Therefore, when regulating cross-border telework, attention must be paid to upholding decent working conditions across national borders, including

¹¹² Data source: the Czech Chamber of Commerce; Chamber Barometr; Spring

¹¹³ Data source: the Czech Chamber of Commerce; Chamber Barometr; Spring

the right to disconnect and protection against surveillance and overwork¹¹⁴. The involvement of social partners and cross-border cooperation of labour inspectorates will be crucial for ensuring this.

In conclusion, working patterns are changing rapidly. Teleworking has become an inherent part of working life; and once the genie is out of the bottle, it rarely returns. It is, therefore, crucial that discussions on this topic are not disregarded because of its still limited use in cross-border situations today. By addressing tax, social security and labour regulation, in collaboration with social partners and enforcement authorities, the EU can foster a conducive environment for the inclusive development of telework.

¹¹⁴ These challenges apply to telework in general and are not limited to teleworking across national borders.

6. Recommendations

A call for proposals to study the potential of cross-border telework in the EU

To better assess the need for further regulation, the European Commission should consider launching a call for proposals to examine the potential demand for various cross-border telework arrangements (fully remote, hybrid, or workcations), their potential for economic and regional development, and the potential risks associated with a broader implementation of cross-border telework.

Invest in the out-roll and promotion of digital tools

The European Commission should continue to invest in the out-roll and promotion of digital tools aimed at simplifying information gathering and reporting of telework. For this, it is crucial that new digital initiatives like the Single Digital Gateway are properly funded, complete, and well-promoted among businesses and workers throughout Europe to ensure their success.

Explore options for simplifying and better-coordinating taxation

Taxation hurdles are a major burden to the development. The European Commission and the member states should explore options to simplify and better coordinate income and corporate taxation, possibly by introducing tolerance thresholds in double-income taxation treaties, introducing a one-stop shop for income taxation, or by increasing the alignment of tax national declaration forms.

Work towards a better coordination of social security and taxation

The non-coordination of taxation and social security represents a major obstacle for teleworkers and companies. The European Commission should explore ways to improve coordination. A tolerance threshold on income taxation aligned with the social security threshold, or the setup of a working group of taxation and social security experts can be considered.

A directive on telework and the right to disconnect

To ensure the sustainable use of telework in the future, the European Commission should consider proposing a directive on telework enshrining, amongst others, the right to disconnect and place limitations on monitoring remote employees.

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