

The framework agreement on telework

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The solution took the form of a multilateral framework agreement concluded under Article 16 paragraph 1 of Regulation 883/2004, which allows the competent authorities of two or more states to agree on exceptions to the general rules in the interest of certain persons. The agreement, which entered into force on 1 July 2023, provides that a person who habitually teleworks cross-border may, on request, remain subject to the legislation of the state where the employer has its seat, provided that the telework in the state of residence accounts for less than 50 per cent of total working time.¹ Switzerland, Germany and France have all signed the agreement, so that it applies in the relations that matter for Basel.

The framework agreement has an important practical limit. It requires an application by the employer and the employee to the competent authority of the employer's state, which then issues the certificate A1 confirming the applicable legislation. It covers only telework within the meaning of the agreement, meaning work performed from home or another place in the state of residence using information technology. A person who regularly works in a third state or who is self-employed in the state of residence falls outside its scope.² An employer in Basel that allows its cross-border staff to work up to two days a week from home must therefore keep records of working time and file the applications properly. When the share of home working reaches 50 per cent, the general rule applies again, with the consequence that the social security of the state of residence becomes competent.

For employers the framework agreement solved the most pressing problem. The question of home working remains nevertheless a matter of coordination between three legal fields, since social security, tax law and labour law each apply their own thresholds. A commuter may fall within the 49.9 per cent limit of the framework agreement while exceeding the

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thresholds that apply in tax law, or the reverse. The sections below on the tax treaties show that the tax thresholds differ from those of social security.

1 Notes

1. Framework Agreement on the application of Article 16(1) of Regulation (EC) No 883/2004 in cases of habitual cross-border telework, in force since 1 July 2023. On Swiss participation, see the communications of the Federal Social Insurance Office. Status of the signatory states to be verified. ↩
2. On the conditions of application of the framework agreement, the application procedure and the issue of the A1 certificate, see the explanatory notes to the framework agreement and the guidance of the FSIO. To be verified. ↩

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