

GMS Flash Alert

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European Union – Updated Social Security Guidance

The guidance note on telework issued by the Administrative Commission on 21 June 2023¹ provides the latest information about social security for teleworkers in the European Economic Area (EEA) and Switzerland. It describes how the European Union (EU) rules for social security apply to different situations for employees teleworking from other countries.²

WHY THIS MATTERS

When employees telework from another country, it is important to clarify which provisions for social security coverage apply to them. Different teleworking situations are covered by different social security provisions and each provision stipulates different requirements for exempting an employee from social security in the host country.

The guidance note describes different situations of teleworking and highlights that a consideration of the reason for teleworking – whether it is in the employer’s or employee’s interest – is irrelevant to assessing social security coverage during telework abroad. Further, the guidance note specifies that an agreement between an employee and employer is sufficient to conclude that an employee is posted under the posting provision for social security (e.g., in an instance of “workation” – combining work and vacation).

Due to specific characteristics of telework, it is strongly recommended that employers obtain valid A1 certificates for social security coverage for employees who telework abroad.

Guidance Note in More Detail

General Information

The EU legislation stipulates that a person is covered by social security in the country where work is performed irrespective of its character or duration. It is possible to be exempted from the application of social security legislation in

the country where work is performed when an employee is temporarily posted or when an employee works in two or more countries.

Due to the specific character of telework, it was unclear whether all provisions under social security legislation can apply to telework, or if telework in some situations should be covered by social security in the country of work by default.

The guidance note provides that “cross-border telework” is a term for a situation in which an employee works in one or more EU member states other than the one where the employer’s place of business is situated, and work is done by using information technology connected to the employer’s or business’s working environment. The main point is that telework is done to fulfil the tasks assigned by the employer. Further, it is important that teleworking takes place under an agreement between employee and employer.

Posting of Teleworkers

The guidance note clarifies that the posting provision in the EU legislation for social security can apply to teleworkers. While there is a need for an agreement to telework between employer and employee, who took the initiative to telework or in whose interest an employee teleworks is irrelevant.

For example, when an employee works abroad as an extension of vacation – so-called workation – it is possible to apply the posting provision in the EU legislation, so that the employee can remain covered by social security in the home country.

Teleworking in Country of Residence and Country of Employer

The application of the provision for work done in the country of residence and the country of employer in the EU legislation for social security is operative regardless of the type of work done. When an employee works at least 25 percent of the time in the country of residence, social security in the country of residence applies. When an employee works less than 25 percent in the country of residence, social security in the country of employer applies.

Eighteen countries have signed the Framework Agreement for social security that provides an option for employers and employees to maintain social security coverage in the country of the employer when an employee works less than 50 percent of the time in the country of residence. The country of residence and the country of employer must be parties to the Framework Agreement for this option to be available to employers and employees in question. See [GMS Flash Alert 2023-143](#), 17 July 2023, and [GMS Flash Alert 2023-86](#), 21 April 2023.

Teleworking in Multiple Countries

The provision for work in multiple countries as a part of a habitual working pattern in the EU legislation for social security applies to teleworking. The nature of activities performed is not relevant for assessing applicable law for social security in this situation.

When an employee works at least 25 percent in the country of residence, social security in the country of residence applies. When an employee works less than 25 percent in the country of residence, social security in the country of the employer applies.

MEIJBURG & CO. INSIGHTS

Teleworking is still considered a novelty in many legal contexts and some local administrations are still unsure if teleworkers are eligible for social security coverage in the home country.

MEIJBURG & CO. INSIGHTS continued:

It is therefore strongly recommended to stay apprised and apply for A1 certificates for all employees who are teleworking abroad to avoid potential future issues concerning claims for benefits, or other local requirements that would be imposed while performing telework or workation activities.

Employers considering using the Framework Agreement for social security should be mindful that retroactive application is not uniformly available and a timely application of the Framework should be planned for.

FOOTNOTES:

1 European Commission: [*Guidance Note on telework applicable from 1 July 2023*](#), 21 June 2023 (AC 137/23).

2 Regulation 883/2004/EC on coordination of social security systems; Regulation 987/2009/EC about implementation of Regulation 883/2004/EC.

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Contact us

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