

(English version)

**Question for written answer E-001580/22
to the Commission
Cindy Franssen (PPE), Jeroen Lenaers (PPE)
(26 April 2022)**

Subject: Follow-up question on teleworking for cross-border workers

During the COVID-19 crisis, the tax and social security position of cross-border workers working from home and their employers was regulated perfectly. The coherence between social security, taxation and employment law was guaranteed and workers could largely continue to work from home. Cross-border workers and their employers are very concerned that a definitive arrangement has not been put in place to ensure coherency between the provisions in EU Regulation 883/2004 determining which rules are applicable and the rules in the relevant tax treaties. Further to the answer to parliamentary Question E-002649/2021, we would like to ask a number of follow-up questions:

1. What is the Commission's policy to ensure consistency between taxation and social security, so as to ensure that there is no difference in net pay and wage costs between cross-border workers and resident workers?
2. In a number of cross-border cases, employers prohibit their cross-border workers from working more than 25% from home, whereas this restriction is not applied to their colleagues who are resident in the country of employment. Is such a distinction not prohibited by EC law ⁽¹⁾ and does it constitute indirect discrimination?
3. Is the Commission prepared to find a lasting solution for the increased amount of teleworking undertaken by cross-border workers, one which is in line with Regulation 883/2004 and the existing bilateral tax treaties?

**Answer given by Mr Schmit on behalf of the European Commission
(13 July 2022)**

The level of income taxes, social security contributions and ways of financing social security differ amongst Member States. This can lead to significant inconsistencies and result in obstacles for cross-border workers. The Commission is aware and currently working on a means to help to address these issues ⁽²⁾.

According to Article 45 of the Treaty on the Functioning of the European Union, EU citizens are entitled to work in another Member State and enjoy equal treatment with nationals in access to employment, remuneration, working conditions (such as telework), dismissal and all other social and tax advantages.

The determination of the applicable social security legislation to workers pursuing a professional activity in two or more Member States is set out in Regulations (EC) No 883/2004 and No 987/2009 ⁽³⁾.

According to these rules, based on conditions ⁽⁴⁾ assessed by the national authorities, these employees may be subject to the legislation of their country of residence.

This might lead to a difference of treatment with domestic workers. Provided this is in line with national law and practice and with applicable collective agreements, it could be compatible with EC law to the extent that it is justified by the general interest of the protection of workers to whom the same legal conditions apply within the undertaking.

The Commission is working with the Administrative Commission for the coordination of social security systems to provide guidance to national authorities for the determination of the legislation applicable to cross-border teleworkers, and is reflecting on finding stable and long-term solutions in relation to cross-border telework, with the aim to ensure that social security rules are better adapted to the new developments regarding increasing use of telework and other hybrid forms of work, in particular for cross-border workers.

⁽¹⁾ Article 45 TFEU

⁽²⁾ In its communication COM(2010) 769 final on 'Removing Cross-Border Tax Obstacles for EU-Citizens' the Commission, *inter alia*, proposed to establish a dialogue with Member States' tax administrations and stakeholders on encouraging Member States to adopt special rules for frontier workers and mobile workers that take account of the interaction of tax and social security systems in different Member States.

⁽³⁾ OJ L 166, 30.4.2004, p. 1-123 (Article 13) and OJ L 284, 30.10.2009, p. 1-42 (Article 14).

⁽⁴⁾ According to Regulations Regulation (EC) No 883/2004 and (EC) No 987/2009, following an overall assessment based on indicative criteria such as working time and/or remuneration foreseen for the coming year, a share of less than 25% of the activity of an employee carried out in the Member State of residence, provides an indication that this employee does not pursue a substantial part of his activity in his country of residence and therefore is not subject to its legislation.