

(English version)

Question for written answer E-001835/22
to the Commission
Pascal Arimont (PPE)
(18 May 2022)

Subject: Teleworking rules for cross-border workers

The opportunity to work from home has become increasingly prevalent in the wake of the COVID-19 pandemic, and many employers are keen to continue offering it to their employees in the future. This affects the tax treatment and social security obligations of people who work in one Member State and live in another.

A German employer has now decided to allow its employees living in Germany to telework. Those living in Belgium are not allowed to do so, however. The reason the employer gives for this is that extremely burdensome checks and administrative efforts are required by the rules that apply in the different Member States and in order to deal with specific individual cases. The effort required and the associated costs would apparently be completely disproportionate given the small number of employees able to benefit from teleworking.

1. Is the Commission aware of this problem?
2. Is the employer concerned not breaching Article 45 of the Charter of Fundamental Rights of the European Union on freedom of movement and of residence by discriminating against workers living abroad?

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

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.

In addition, the determination of the applicable social security legislation to workers pursuing a professional activity in two or more Member States is foreseen in Articles 13 of Regulation 883/2004 and 14 of Regulation 987/2009 ⁽¹⁾.

These rules foresee that, depending on the fulfilment of certain conditions ⁽²⁾, these employees may be subject to the legislation of their country of residence.

The respect of these conditions by an employer might, in some cases, lead to a difference of treatment with domestic workers, which could be compatible with EC law to the extent that it is justified by the general interest of the protection of workers.

The Commission is working with national authorities to provide guidance regarding the implications of an increase of telework for some mobile workers and is reflecting on finding stable and long-term solutions in relation to cross-border telework to ensure that social security rules do not create an obstacle for telework of certain categories of workers.

From a taxation point of view the level of income taxes, differ amongst Member States. Combined with differences in social security contributions and ways of financing social security, 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. ⁽³⁾

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

⁽²⁾ The abovementioned Regulations state that, 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.

⁽³⁾ 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.