

Framework Agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework

(1) *Given the* flexibilization and digitalization of the labour market as well as the increase in cross-border telework since the Covid-19 pandemic, telework has become a structural way of working for many workers;

(2) *In the light* that Regulation (EC) No 883/2004 was concluded when telework was performed less commonly;

(3) *Given the desire* to mitigate the effect of cross-border telework on the applicable legislation in social security in the short term;

(4) *Given the wide variety* of teleworkers and the complexity of realizing this desire with regard to such a diverse group of persons in the short-term;

(5) *Bearing in mind* that Article 16 (1) of Regulation (EC) No 883/2004 provides for the option of exceptions from the applicable legislation specified under Title II of this Regulation;

(6) *Agreeing on* conditions under which requests for exceptions to Article 13 (1) (a) of Regulation (EC) No 883/2004 due to habitual cross-border telework should be facilitated as much as possible;

the competent authorities or the institutions designated by the signatory States conclude the following Framework Agreement:

Article 1

Definitions

For the purposes of this Framework Agreement:

- (a) 'Basic Regulation' means Regulation (EC) No 883/2004;
- (b) 'Implementing Regulation' means Regulation (EC) No 987/2009;
- (c) 'Cross-border telework' is an activity which can be pursued from any location and could be performed at the employer's premises or place of business and:
 1. is carried out in a Member State or Member States other than the one in which the employer's premises or the place of business are situated and
 2. is based on information technology to remain connected to the employer's or business's working environment as well as stakeholders/clients in order to fulfil the employee's tasks assigned by the employer or clients, in case of self-employed persons;
- (d) 'EESSI' means Electronic Exchange of Social Security Information;
- (e) 'Residence' means residence as referred to in Article 1 (j) of the Basic Regulation;



Article 2

Scope

(1) Unless otherwise provided in this Article, this Framework Agreement covers all persons to whom Article 16 (1) of the Basic Regulation can be applied, provided that their residence is in a signatory State and the registered office or place of business of the undertaking or employer is situated in one other signatory State.

(2) This Framework Agreement covers persons to whom the legislation of the State of residence would be applicable as a result of habitual cross-border telework in application of Article 13 (1) (a) of the Basic Regulation in conjunction with Article 14 (8) and 14 (10) of the Implementing Regulation and who are employed by one or more undertakings or employers (hereinafter only referred to as 'the employer') which have their registered office or place of business in only one other signatory State.

(3) Without prejudice to Article 6, this Framework Agreement shall not cover persons who:

- (i) habitually pursue an activity other than cross-border telework in the State of residence and/or
- (ii) habitually pursue an activity in a state other than those mentioned in paragraph 1 and/or
- (iii) are self-employed.

Article 3

Applicable legislation

Upon request, a person who carries out habitual cross-border telework within the meaning of Article 1 of this Framework Agreement and is covered by Article 2, will be subject on the basis of Article 16 (1) of the Basic Regulation to the legislation of the State in which the employer has his registered office or place of business, provided that the cross-border telework in the State of residence is less than 50% of the total working time.

Article 4

Procedure

(1) A request under Article 3 of this Framework Agreement shall be submitted in accordance with Article 18 of the Implementing Regulation.

(2) This Framework Agreement does not cover requests, as referred to in paragraph 1, if such requests concern a period prior to the entry into force.

(3) Without prejudice to paragraph 2 and Article 6, this Framework Agreement shall not cover a request as referred to in paragraph 1, if such a request concerns a period prior to the date on which the request was submitted, unless during this period social security contributions were paid into or the employee was otherwise covered by the social security scheme of the signatory State in which the employer has his registered office or place of business, and:

- (i) the requested period prior to the date on which the request was submitted does not exceed three months, or
- (ii) such request is submitted no later than 30 June 2024 and the period prior to the date on which the request was submitted does not exceed twelve months.

(4) An agreement under Article 3 of this Framework Agreement may be applied for a maximum of 3 years at a time, with extensions possible upon a new request.



(5) The exchange of information concerning the individual cases under this Framework Agreement shall take place between the competent bodies via EESSI using LA_BUC_01 where the agreement of the signatory State of residence could be considered as pre-given.

(6) The competent institution of the signatory State whose legislation is applicable shall provide an attestation (PD A1) in accordance with Article 19 of the Implementing Regulation.

Article 5

Depository State

(1) A signatory State will be appointed as depository State which will:

- (i) collect all signed copies of this Framework Agreement;
- (ii) duly publish the Framework Agreement and;
- (iii) inform all signatory States of relevant information.

(2) The signatory States shall forward to the depository State the Agreement signed by the competent authority or the institution designated by the signatory State.

Article 6

Final Provisions

(1) This Framework Agreement does not affect the possibility of concluding an individual agreement on the basis of Article 16 (1) of the Basic Regulation in situations, which are not covered by Articles 2 to 4 in which the special situation of habitual cross-border telework could be taken into account on an individual basis. The signatory States agree that the lack of a concrete end date for structural [non-temporary] cross-border telework in such cases will not be used as a reason to refuse the conclusion of an individual agreement, which falls out of scope of this Framework Agreement, under Article 16 (1) of the Basic Regulation as an exception to Article 13 of the Basic Regulation.

(2) This Framework Agreement shall enter into force on 1 July 2023 as long as at least two States have signed it. It is concluded for a period of 5 years and shall be automatically extended each time for another 5 years.

(3) In case a signatory State signs this Agreement at a later stage, it shall take effect for said State on the 1st of the month following the signature.

(4) Any of the signatory States may terminate its adherence to the agreement by giving 3 months' written notice to the Depository State.

(5) This Framework Agreement may be terminated by agreement of all signatory States.

(6) The expiry of this Framework Agreement shall not affect the validity of agreements concluded on the basis of Article 3 as long as the prevailing facts do not change.

Done at Madrid on 2023.06.29.

by the Spanish competent authority.

Iria Alvarez Besteiro

Technical Secretary General
Ministry of Inclusion, Social Security and Migrations



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