



Solving obstacles to cross-border telework

Close to a breakthrough?

Wednesday 14th June, 2023
Benelux Unie, Rue de la Régence 39, 1000 Bruxelles

Programme

Interpretation available in Dutch, German and French

- 10.15 Registration**
- 10.30 Welcome**
Michel Tilemans, Deputy Secretary-General of the Benelux Union & Martin Unfried, ITEM
- 10.35 Introduction – Innovative b-solutions 2.0: from problem analysis to problem solving**
Ricardo Ferreira, DG REGIO & Martin Guillermo Ramirez, AEBR
- 10.45 B-Solutions case 100: Cross-border telework**
Heike Xhonneux, GrenzInfoPunkt Aachen/Eurode: *Background - why is it a problem for cross-border workers and employers? Why was the case submitted?*
Prof. Dr. Marjon Weerepas: *Analysis – ITEM research reveals the obstacles and solutions*
- 11.05 Panel: Social Security – The Big Breakthrough?**
(1) What does the Framework Agreement mean in practice for cross-border workers and employers?
(2) The future of the Framework Agreement in relation to Regulation 883/04?
Panel guests: Lode van Steenkiste, RSZ, member of the ad-hoc group on the Framework Agreement // Jan Kielwein, BMAS // Dita Collinsova, DG EMPL // Heike Xhonneux, GrenzInfoPunkt Aachen-Eurode
- 11.45 Reflection of Karl Heinz Lambertz, President of AEBR**
- 12.15 Lunch Break**
- 13.00 Next item: how to link the tax arrangements to social security?**
Panel guests: Prof. Dr. Marjon Weerepas, ITEM // Evelien de Jong, EY // Jos Poukens, ACV // Reijer Janssen, Director Dutch ministry of Finance
- 13.30 Connecting the initiatives: on which level should taxation be dealt with?**
Introduction: Pim Mertens, ITEM: *Mapping the existing initiatives*
Panel guests: Reijer Janssen, Director Dutch ministry of Finance And chair of Benelux-meeting on taxation // Yves Evrard, chair of the Commission Finance Benelux Parliament // Pascal Arimont, MEP // Karl Heinz Lambertz, AEBR
- 14.15 Reflection: Albert Raedler, DG TAXUD**
- 14.35 Discussion**
- 15.05 Conclusions**
- 15.30 Networking and Drinks**

Solving obstacles to cross-border telework

Close to a breakthrough?

On 14 June 2023 the B-Solutions workshop, organized by ITEM, GIP Aachen/Eurode and AEBR, in cooperation with the Benelux Union took place in the context of a B-Solutions project funded by DG REGIO. With a focus on the border regions between Germany, the Netherlands and Belgium, the workshop explored solutions on the issue of teleworking, cross-border working, taxation and social insurance issues, explored how these can be resolved within emerging frameworks at EU and Member State Levels, and discussed the role of key organisations in implementing the recommendations of this B-Solutions case.

Though the Covid-pandemic is no longer omnipresent, obstacles to cross-border teleworking persist to exist. Building on this premise, the workshop aimed to review the progress made in resolving issue in the domains of social security and tax law, when it comes to teleworking across borders.

Cross-border teleworking: towards neutrality?

A complicating factor is that there is coordination of social security (Regulation 883/2004); when it comes to taxation, there is no European coordination regulation, but bilateral tax treaties are in place. This fundamental legal difference should be borne in mind in finding a solution for the obstacles to cross-border telework. As regards social security, a solution has been found in the form of the Framework Agreement considered a best practice how member states can cooperate across borders. Although it is a European issue, member states have solved it jointly on a temporary basis (in anticipation of structural embedding in the Regulation). A structural solution – for instance, amending the Regulation 883/2004 – is still to be awaited. While efforts are being made at EU and OECD level to arrive at more general solutions so that border workers can work in best conditions from home without negative consequences, there are also specific legal/political instruments at Benelux level to reach a solution. The mantra resonating during the workshop was therefore to strive for a similar harmonized framework for taxation, possibly first within the Benelux and subsequently on a European level. Moreover, during the workshop, among all speakers there was a strong appeal for drawing up uniform definitions when it comes to ‘teleworking/working from home’, since practice has shown that existing definitions still deviate heavily.

B-solutions: resolving obstacles to cross-border regions

In revealing obstacles for cross-border regions, and certain forms of discrimination in cross-border regions, it is proven that the INTERREG-programme is successful, but more freedom is required when it comes to implementing solutions, and actually resolving legal obstacles. Hence, the b-solutions projects strive to make an analysis of each legal problem, such as cross-border teleworking – and try to find a solution. However, the more obstacles are found, the more it is evident that there is no apt instrument. In order to strengthen the process of finding, and implementing in particular, solutions for cross-border obstacles, AEBR launched the second pillar of the b-solutions project, in which competent authorities are invited to implement a solution for an obstacle laid bare by pillar 1-projects. This may be a promising instrument in the future of resolving cross-border obstacles and putting cross-border regions higher at the European agenda.

Social security consequences: the Framework agreement

Now that the Framework agreement has been signed by several countries, frontier workers working from home are offered more legal certainty. Moreover, a patchwork of bilateral arrangement has been avoided by this Framework agreement. These were the main objectives of the ad-hoc working

group in the Administrative Commission. Countries that haven't signed yet are, at least, very willing to do so.

It is, however, to be noted that in the domain of social security, national systems are coordinated, not harmonized. Hence, differences between national systems, when it comes to social security, may remain to exist. Despite this framework agreement being an important step towards more neutral cross-border teleworking, the work on resolving cross-border obstacles shall be continued. One of the initiatives taken is proposing to amend the Regulation 883/2004, aimed at reaching a more general solution for cross-border teleworking. When it comes to information provision pertaining to the application of the framework agreement, it has become apparent that additional information is desired. The ad hoc group is committed to offer FAQ's in the long term, and flowcharts in the short term.

Tax law: building upon the Framework agreement?

As regards finding a solution for the fiscal consequences, it appeared that it seems logical to tie in with social security rules, mainly with respect to offering legal certainty for both employee, as well as the employer. An additional advantage of such an approach is that the combined burden (social security contributions together with tax levied) remains in one country.

When it comes to avoiding discrimination of cross-border teleworkers, for the Netherlands, equality in the workplace (colleague) is the guiding principle. Equality in the street (neighbor) is possible but both cannot be achieved with merely one instrument. What is more, it appeared that another principle to be adhered to is simplicity; it should be as easy as possible to comply with tax obligations. That also requires understandability: a salary split is not easy, for both employer and employee. In this vein, a threshold (for working days from home) proves to be not that simply, since taxpayers still have to fill in, and submit a tax return in both countries. Hence, an often-heard appeal during the workshop was to develop a one-stop-shop system, i.e. a single point of contact where taxpayers deal with only one tax authority, tax return, administrative obligations etc. It was a commonly underlined principle that simplicity should be bear in mind and that a salary split is troublesome for both employer and employee in this regard.

A particular problem as regards taxation, concerns the so-called 'permanent establishment'. In the very short term, clarity around this issue is very likely to appear. This is a quick win, for which in any case more guidance can be provided jointly with Belgium, which boils down to the point that a permanent establishment will not be considered present. As it seems, in relation to Germany, providing clarity on this issue will take a bit longer. This would also be something that can be guided by the multilateral level, e.g. the Benelux Union, European Commission or OECD to come with Guidance on this matter.

In trying to find a solution for the fiscal (detrimental) consequences of teleworking, proposals for drawing up a tax directive have been put forward. This vehicle of European 'hard law' (binding on Member States) is unlikely to be approved, since it requires unanimity of all European member states. Given this, member states will try to resolve the obstacles by reaching, and concluding, bilateral agreements. The major downside of this approach, is the vast amount of differences in bilateral arrangements across Europe, for instance when it comes to the number of days working from home to be disregarded under a threshold-arrangement. The presented example of cross-border business parks where it is agreed that taxation follows social security is considered such an example of simplicity.

What is more, in finding a solution, indirect effects, such as losing the right on a fiscal facility (e.g. mortgage interest deduction) must be taken into account. This proves that there will be no 'one-size-

fits-all' solution. It further demonstrates that further cross-border impact assessments are required to offer a more profound insight into the issue of cross-border teleworking, unraveling the effect of personal circumstances such as household composition, marital status, age of partners, level of income etc.

A step closer to a break-through

The experience of the Framework Agreement can be useful for a fiscal solution, but one should be aware that fiscal complexity might affect the use of the Framework Agreement. As far as the Netherlands is concerned, efforts are targeted at the bilateral level in the short term; at multilateral level (OECD and EC) in the long run. Although the European framework agreement and possible tax solutions can be seen as an important step toward obstacles-free home working for frontier workers, ample issues remain when it comes to the fitness of European social security legislation and tax law, e.g. new forms of labour, Platform Work Directive, digital nomads, teleworking. Yet, the Benelux, as forerunner of the European Union, can serve as a testing ground for trying to resolve these cross-border obstacles that hinder the process of European integration. Here a common approach to the principle of 'permanent establishment' appears to be a relatively quick win. In the development of future cross-border teleworking arrangements, the thrive should be to establish as much as harmonisation as possible regarding definitions and thresholds.

