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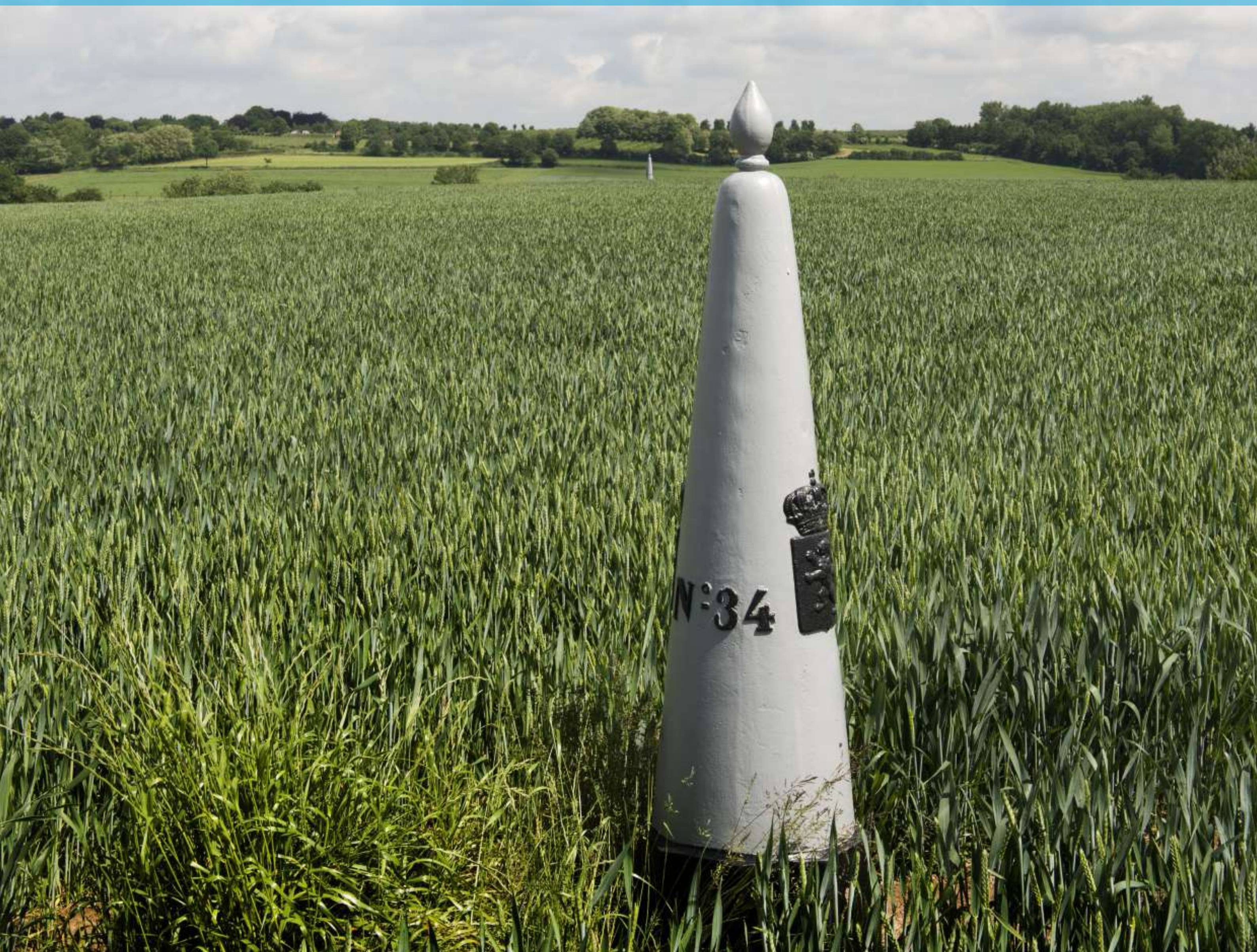
Cross-Border Impact Assessment 2021

Dossier 2: Impact analysis of the future of working from home for cross-border workers after COVID-19



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Dossier 2: Impact analysis of the future of working from home for cross-border workers after COVID-19

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The *Institute for Transnational and Euregional cross-border cooperation and Mobility* / ITEM is the pivot of research, counselling, knowledge exchange and training activities with regard to cross-border mobility and cooperation.

ITEM is an initiative of Maastricht University (UM), the Dutch Centre of Expertise on Demographic Changes (NEIMED), Zuyd University of Applied Sciences, the City of Maastricht, the Euregio Meuse-Rhine (EMR), and the Dutch Province of Limburg.

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List of Abbreviations

BE	Belgium
CAK	*Centraal Administratie Kantoor* (Dutch Central Administration Office)
cao	*Collectieve Arbeidsovereenkomst* (collective labour agreement)
DE	Germany
ELA	European Labour Market Authority
JAR	Case law in employment law
NL	Netherlands
no.	Number
OECD	Organisation for Economic Co-operation and Development
p.	Page
para.	Paragraph
OJEU	Official Journal of the European Union
PE	Permanent establishment
Rb	Court
resp.	Respectively
SER	*Sociaal Economische Raad* (Social and Economic Council of the Netherlands)
Stb.	*Staatsblad* (Official Gazette of the Netherlands)
Stcrt.	*Staatscourant* (Government Gazette of the Netherlands)
Ibid.	In the same place/source
V-N	*Vakstudie Nieuws*
Wet IB 2001	*Wet inkomstenbelasting 2001* (Income Tax Act 2001)
EMPR	Employer
WIB 1992	*Wetboek van de inkomstenbelastingen 1992* (Income Tax Code 1992)
ZFW	*Ziekenfondswet* (Health Insurance Act)

1. Introduction

1.1 Research question

Working from home has increased enormously during the COVID-19 crisis. According to European figures, approximately 40% of the paid hours by employees in the European Union were worked from home[1], and in the Netherlands specifically, 49% of the employees worked wholly or partly from home.[2] This also applies to cross-border workers. It is expected that working from home will continue after the crisis. In fact, a large number of employees want to continue working from home after COVID-19.[3] Many employers also seek to facilitate homeworking and adjust their policies accordingly.[4] In addition, politicians are also raising the issue of working from home and making it structural. Various initiatives have been developed to formalise working from home.

Working (partly) from home has implications for the regulations that apply to cross-border workers, particularly with regard to their tax and social security obligations. During the crisis, Belgium, Germany and the Netherlands took various temporary measures to neutralise the adverse effects of working from home. By working (partly) from home, the workplace is (partly) transferred from the state of employment to the state of residence. This relocation has complicating consequences for, among other things, tax liability, insurance obligation and pension accumulation. The central question is what influence the current applicable rules have on (partial) homeworking by cross-border workers and whether these rules need to be amended.[5] A related question is whether the initiatives developed to encourage homeworking take sufficient account of cross-border workers.

The central question can be broken down into a number of sub-questions:

1. Are the temporary measures an effective instrument to guarantee the rights of cross-border workers in the future?
2. Can the procedure as laid down in Article 16 of Regulation 883/2004 be used as a legal and practical instrument in the new circumstances? It must be borne in mind that competent authorities do not always take a uniform view. The same question can be asked with respect to a possible agreement pursuant to Article 8(2) of Regulation 883/2004.
3. Is the 25% criterion referred to in Article 14(8) of Regulation No 987/2009 sufficient to justify the allocation of the insurance obligation to the state of residence in the case of home-based work, or should this percentage be adjusted?

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[1] Eurofound, Report Living, working and COVID-19, 2020, p. 59.

[2] TNO, De impact van de COVID-19 pandemie op werknemers, TNO, Leiden: 2021.

[3] See for example in Belgium, where working from home has become an important job criterion. Commissie voor sociale zaken, werk en pensioenen, 22 June 2021.
See also Report Living, working and COVID-19, Eurofound 2020, p. 34.
Recent research shows that 24% of employees in the Netherlands want to work completely from home, 34% want to work completely at the workplace and around 40% seek a hybrid form. See Arbo in cijfers: 4 in 10 home workers want to work hybrid (arbo-online.nl), retrieved 19 October 2021.

[4] See for example the Collective Labour Agreement for Dutch Universities for the period from 1 January 2021 to 31 March 2022. With regard to foreign employees, the following is noted: 'Appropriate arrangements are made locally with employees who do not live in the Netherlands, taking into account the tax and social security situation'.

[5] See also the B-solutions report, Corona Pandemic and Home Office - Consequences for the social security and taxation of cross border workers, July 2021.

4. The current tax treaties do not provide for homeworking facilities. An important question that arises here is whether the term 'homeworking' requires further definition, and subsequently, whether the developed 'fiscal' definition should be brought in line with Regulation 883/2004.

These questions will be answered by describing the applicable rules on tax and insurance obligations in times of crisis (section 2), cross-border homeworking after the crisis (section 3) and through a number of calculations (section 4), followed by a conclusion and several recommendations (section 5).

This dossier can be seen both as an ex-post analysis of the COVID-19 measures and an ex-ante assessment exploring the potential new regulations to be developed.

1.2. Definition of working from home

It should be noted here that, in order to take the next steps in cross-border homeworking, it is important to know exactly what is meant by homeworking. The terms ‘working from home’ and 'teleworking' are currently used interchangeably. Does working from home also include the so-called *digital nomads* and teleworkers? Consider, for example, an employer who recruits employees from abroad who work for this employer via a server in their state of residence. In this event, no cross-border work takes place, given that the employee lives and works in the same state. This could lead to abuse, in that employers might choose countries with low premium rates, so as to reduce their employers’ costs. In our view, this form of teleworking should not fall under homeworking. In this report, 'working from home' also excludes employees who normally work in two countries for two different employers. Article 13 of Regulation 883/2004[6] provides solutions for these situations. The above leads to the following recommendation: the meaning of working from home needs to be clarified.

In the following, we assume the situation in which an employee from Member State A wholly or partly works from their state of residence for **one** employer established in Member State B. As noted earlier, for those working in two Member States for **multiple** employers, the current rules should be applied, so as to avoid complexity and an increase in the implementation costs. This report therefore deals with the situation where an employee performs work in two Member States for a single employer.

[6] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, p. 1.

1.3 Research area, themes, benchmarks, indicators

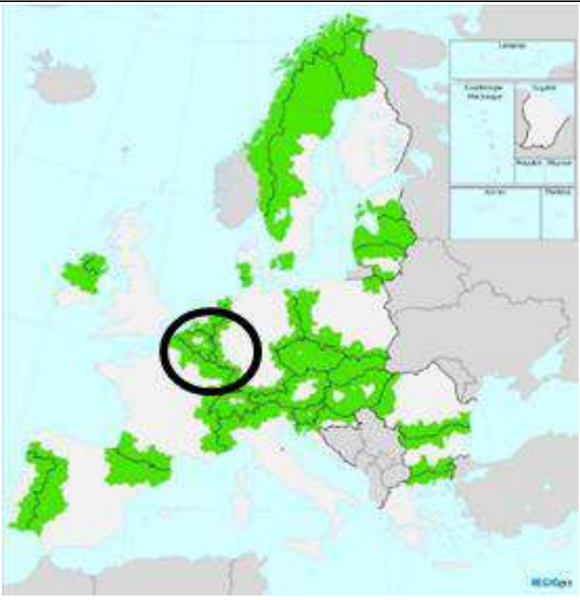

Figure 1: *Example*: Border regions on the national borders of two or more Member States, at NUTS-3 level. Source: European Commission, COM(2017) 534.

With respect to the potential effects of current and future legislation on the situation of cross-border workers, the border regions are not exclusively the geographical area of research. As such, the situations described refer to all employers and employees facing legislative consequences of not (entirely) working in their respective states of residence. This makes the results relevant for the entire territory of the three Member States under consideration: Belgium, the Netherlands and Germany. Hence, we focus on the relationships between the Netherlands and Belgium; the Netherlands and Germany; and Belgium and Germany. A lot of cross-border commuting takes place in the cross-border regions between these countries. Some of the findings on social security are, to some extent, also valid for other Member States forced to deal with the EU coordination regulation. By contrast, the specific outcomes and the assumptions made regarding taxes are closely related to the bi-lateral tax treaties between the different countries under study. At the same time, however, we assume that citizens and employers of border regions are more severely affected due to a higher number of cross-border workers in those regions. In addition, we assume that a relevant adaptation of the rules, taking into account an increase in homeworking, is appropriate and essential for the functioning of the cross-border labour market. If the rules are not in line with the specific situation of cross-border workers and their employers, cross-border work could become less attractive. As such, even though we explore the situation in the three countries at national level, we realise that, ultimately, the consequences are likely to prove more severe as one approaches the national borders.

Themes, benchmarks, indicators

In the following overview, we show how the selected topic does or does not relate to the three themes of **European Integration**, **Sustainable Development/Socio-Economic Development** and **Euregional Cohesion**. Some of the associated indicators were used in our impact assessment, whereas others were not included due to lack of relevance at that stage. Some of the economic indicators could not be used since there is a broader lack of data on cross-border employees working from home. As often emphasized by other ITEM reports, more sophisticated data collection on the cross-border labour market forms a prerequisite to better assessments and evaluations of cross-border effects.

Table 1: Themes, benchmarks, indicators of dossier 2

Theme	Principles	Benchmark	Indicators
European Integration	Article 18 TEU: no unequal treatment in national policies or national regulations for nationals of another EU Member State within the scope of EU law. Principles in the two proposals to give employees the right to work at home.	Cross-border workers should not be discriminated against. Complex tax and social security rules that hinder homeworking should not be an obstacle for cross-border workers. National legislation intended to facilitate working from home should also improve the situation of cross-border workers. The situation from the perspective of individual cross-border workers in a sample Euregion in the EU with high cross-border mobility. The situation from the perspective of employers of cross-border workers: having a fair position compared to employers who are not employing cross-border workers	Is there a difference between the situations of 'normal workers' and cross-border workers with respect to the facilitation of homeworking? Do new national regulations on homeworking improve the situation of cross-border workers equally as that of non-cross-border workers?
Sustainable development /socio-economic development	EU and national objectives in order to stimulate cross-border labour markets. National objectives to stimulate flexible work, increasing the amount of working days at home. Euregional objectives to establish a sustainable cross-border labour market.	Number of employees working from home as part of the entire workforce. Amount of time average employees spend working from home. The economic impact of effective homeworking on a cross-border labour market.	Quantitative: - Number of homeworking employees in the different regions of the EMR. - Number of homeworking cross-border workers. - Number of days that employees work from home. - Number of days that cross-border employees work from home. Financial consequences for cross-border workers if they increase their number of homeworking days. Financial consequences for the employer. Administrative consequences. Qualitative: - The impact of having less flexibility on cross-border workers. - The impact of having less flexibility on employers.

Euregional cohesion	A functional Euregional labour market. Similar working conditions for cross-border workers compared to their colleagues. Similar conditions for employers with many cross-border workers compared to other employers.	The quality of cross-border employment compared to non-cross-border employment. The state of cross-border employment prior to the stimulation of homeworking.	Quantitative: Companies that are disadvantaged by the homeworking regulations. Qualitative: The nature of these disadvantages and their implications for cross-border relations, considering the national authorities involved (i.e. taxation, social security)

Own compilation.

This cross-border assessment partly covers all three dimensions mentioned in the table above. Based on the principles, the understanding is that there should be no discrimination of cross-border workers regarding homeworking. This means that any situation in which an employer offers its employees the option of working from home for several days per week becomes problematic if this option is not extended to its cross-border workers. This situation might, for instance, occur if an employer wants to avoid the administrative burden related to homeworking. On the other hand, it would certainly also go against the notion of non-discrimination if cross-border employees were forced to work from home for several days per week and suffer tremendous financial disadvantages as a result, compared to their colleagues who are not cross-border workers. This would certainly also harm the objective and violate the principles of a functioning cross-border labour market, as well as the objective to improve the socio-economic situation in cross-border regions.

In this respect, the financial consequences for employers and employees are important indicators. In this study, we were unable to determine the exact number of cross-border workers affected by changes related to homeworking. There are currently no specific data on the number of cross-border workers and the number of days that they work from home. Our study does, however, look into the financial consequences of cross-border work for certain employees by calculating the effects of a split in taxes for all three countries: NL, DE and BE.

2. Applicable rules for taxation and social security in times of crisis

2.1 Introduction

The Euregion under discussion comprises parts of Belgium, Germany and the Netherlands. Both Belgium[7], Germany[8] and the Netherlands have taken several measures for both employees and the self-employed to overcome the COVID-19 crisis. In this report, the focus is on the impact of these

[7] Belgium has also concluded agreements with other neighbouring countries: France and Luxembourg.
[8] Germany has also concluded agreements with other neighbouring countries: France and Luxembourg.

measures on cross-border workers. Although cross-border self-employed persons are also facing problems, they fall outside the scope of this report.[9]

During the crisis, the following measures were taken in relation to cross-border workers, whereby a distinction can be made between measures relating to tax liability and measures relating to insurance liability:

2.2 Tax liability

As regards taxation, the Member States concerned have taken neutralising measures for cross-border workers. The forced working from home of the cross-border worker will have no fiscal consequences during the crisis. It should be noted that cross-border workers can choose between applying the special measures or the relevant tax treaty. In other words, their income can be taxed on the basis of the neutralised situation or on the basis of the actual number of days worked in the state of residence and the state of employment in accordance with the applicable tax treaty.

The following agreements have been concluded:

a. Netherlands-Germany (6 April 2020); the measure applies from 11 March 2020 until 1 January 2022.
b. Netherlands-Belgium (30 April 2020); the measure applies from 11 March 2020 until 1 January 2022.
c. Belgium-Germany; the measure applies from 6 May 2020 until 1 January 2022.[10]

In the relationships between the Netherlands and Belgium; the Netherlands and Germany; and Belgium and Germany, Article 15 of the Netherlands-Belgium Treaty; Article 14 of the Netherlands-Germany Treaty; and Article 15 of the Belgium-Germany Treaty, respectively, would allocate the right to levy tax on the cross-border worker's homeworking days to the state of residence and the state of employment, respectively. The provisions on employed work in these treaties are largely based on Article 15 of the OECD Model Tax Convention. Normally, under Article 15(1) OECD Model Tax Convention, tax on income earned in the state of residence would be allocated to the state of residence unless the employment was carried out in the other state. The right of taxation reverts to the state of residence if, under Article 15(2) OECD Model Tax Convention, three conditions are cumulatively met:

a. the employee spends less than 183 days in the state of employment in any period of 12 calendar months; and,
b. the remuneration is not paid by or on behalf of an employer in the state of employment; and,
c. the remuneration is not borne by a permanent establishment in the state of employment.

It should be noted here that the Belgium-Germany Treaty refers to a 'calendar year' rather than a 'twelve-month period'.

[9] See for example the problems surrounding the TOZO support scheme, where self-employed persons residing abroad and performing work in the Netherlands are not eligible for income support.
[10] See https://financien.belgium.be/nl/particulieren/internationaal/grensarbeiders/akkoorden-covid-19, retrieved 11 October 2021.

The agreements concluded by the Member States generally have a similar structure, including, for example, a specification of when the agreement will end. The agreements may also be terminated unilaterally. At present, the agreements of the Netherlands with Belgium and Germany apply until 31 December 2021.[11] As a result, the terms of the fiscal measures and the social security measure run until January 1, 2022.[12] This means that, as of 1 January 2022, cross-border workers and their employers will fall under the "regular" scope of Article 15 of the OECD Model Tax Convention, while social security normally remains in the state of employment, provided that the cross-border worker works in their state of employment.

With regard to the relationship between the Netherlands and Germany, the additional provision applies that cross-border workers residing in the Netherlands and receiving benefits such as *Kurzarbeitergeld*, *Insolvenzgeld* and *Arbeitslosengeld* from Germany are not taxed for these benefits in their state of residence, i.e. the Netherlands.[13] Normally, pursuant to Article 17 of the Netherlands-Germany Treaty,[14] these payments, if less than € 15,000 per calendar year, should be taxed in the Netherlands. However, these payments are exempt from taxation in the Netherlands under two conditions: firstly, that the taxpayer's initial claim to *Kurzarbeitergeld*, *Insolvenzgeld* or *Arbeitslosengeld* was made on or after 11 March 2020; and, secondly, that the taxpayer can submit the relevant data substantiating the first condition. These benefits are, however, included in the Dutch tax base.[15]

Unemployment benefits paid out from Belgium are still taxed in the state where the salary is taxed as well.

[11] See Agreement between the competent authorities of the Netherlands and Belgium renewing the agreement on the situation of frontier workers in the context of the COVID-19 health crisis of 30 April 2020, as prolonged by the agreements of 19 May 2020, 19 June 2020, 24 August 2020, 7 December 2020 and *Agreement between the Netherlands and Belgium of 23 September 2021, Stcrt.* 2021, 42272; and Agreement between the competent authorities of Germany and the Netherlands concerning the renewal of the Agreement of 6 April 2020 on the application and interpretation of Article 14 of the Tax Treaty between the Netherlands and Germany and on a temporary exemption from some German social security benefits, Decision of 24 September 2021, No 2021-191442, *Stcrt.* 2021, 42308.

[12] Belgium: COVID-19 pandemic and applicable legislation - update (fgov.be), retrieved 1 October 2021.

[13] See Besluit noodmaatregelen coronacrisis, Stcrt. 2021, 11856.

[14] See also the amendment protocol of 24 March 2021 on German Krankengeld and Elterngeld. In all cases, the providing state may tax these benefits. For a Dutch resident receiving such a German benefit, this means that this benefit is not taxable in the Netherlands.

[15] See Besluit noodmaatregelen coronacrisis, Stcrt. 2021, 11856, paragraph 10.

Cross-border educational staff

At this point, the following should be noted: the agreements do not apply to those working in the public sector, for example employees who work across borders in education. With regard to the relationship between the Netherlands and Germany, the Dutch State Secretary of Finance has explicitly stated that taxation exclusively takes place in the disbursing state, as a result of the so-called 'government service article' in the bilateral tax treaties based on Article 19 of the OECD Model Convention. The exception to this are services provided in Germany by German residents, whereby two additional (alternative) conditions apply: the resident of Germany must also have German citizenship or must have become a resident of Germany for personal reasons. With respect to the latter condition, the report on fiscal bottlenecks in cross-border labour noted that the Tax Authority adheres to the principle that the disbursing state is exclusively entitled to levy taxes on the entire wage, and therefore no splitting of taxation rights is in order regarding days worked from home. However, practice is less clear regarding the first situation, in which the person in public service works from home and is a national of the state of residence. The Secretary of State takes the view that, even in this situation, the disbursing state retains exclusive taxing rights on the entire wage and that, consequently, no splitting of taxing rights is in order regarding the days worked from home.[16]

Please note that, since the introduction of the Act on the Normalisation of Legal Status of Civil Servants (*Wet normalisering rechtspositie ambtenaren*)[17], such public servants, i.e. educational staff, are considered employees for social security purposes. In a cross-border context, this means that they are subject to the allocation rules for employees. In situations where these rules apply, for example when working from home, these workers may face the discrepancy of being taxed in the disbursing state and having to pay social security contributions in their state of residence.

2.3. Insurance obligation

The compulsory working from home by cross-border workers could, under the applicable rules, shift the insurance obligation from the state of employment to the state of residence. These cross-border workers perform work in two or more Member States, as a result of which Article 13(1)(a) of Regulation No 883/2004 in conjunction with Article 14(8) and (10) of Regulation No 987/2009 must be applied. Thus, in the event that more than 25% of the working time is spent and/or salary obtained in the state of residence, the legislation of that state becomes the applicable legislation. In the Partena judgment, the European Court of Justice ruled that, when assessing concepts such as 'location', '(…) it should be borne in mind that, according to settled case-law, the meaning and scope of terms for which EU law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part'[18].

Pursuant to Article 14(5) of Regulation No 987/2009, a person who performs work activities in two or more Member States refers to 'a person who simultaneously or in alternation exercises one or more

[16] Letter dated June 15, 2020, No. 2020-00001014002020- 0000101400.

[17] Stb. 2017, 123.

[18] Case C-137/11, Partena, ECLI:EU:C:2012:593, para. 56.

separate activities in two or more Member States for the same undertaking or employer or for various undertakings or employers'.[19]

With regard to the obligation to take out insurance, the Administrative Commission has advised that the consequences of working from home should be ignored. The obligation to work from home due to the crisis is considered to be a case of *force majeure*.[20] Belgium, Germany and the Netherlands have followed this advice and have unilaterally chosen to exempt the homeworking days from the applicable rules in this case.[21]

In the Netherlands, the applicable rules do change for cross-border workers who, during the crisis:

a. was unemployed but started working for an employer in another Member State, or
b. was employed but switched to a new employer established in another Member State.[22]

2.4. Potential problems

It should be noted that working from home also has some advantages, such as reducing CO_2 emissions, the number of traffic jams, and the stress associated with travel time.

As mentioned, the tax and social security consequences described above have also been neutralised during the COVID-19 pandemic. However, shifts in taxation and social security liability may occur once these temporary measures expire if cross-border workers fail to adapt their home-working routines.[23] Among other things, a shift in taxation rights from the state of employment to the state of residence would result in an increased administrative burden for both employees and employers. Salary splits will occur for cross-border workers working partly in their state of residence and partly in their state of employment. Another important consequence is that non-resident cross-border workers would no longer be able use the tax facilities applicable to domestic taxable persons. In this context, both Germany[24] and the Netherlands[25] apply a 90% criterion; Belgium[26] uses a 75% criterion. As a result of working from home and taxation of one's salary in the country of residence, it may become impossible to fulfil this criterion, and those affected may lose the right to fiscal facilities and benefits, such as the Dutch mortgage-interest deduction scheme.

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[19] Practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland, 2013, p. 24.
[20] Administrative Commission AC 075/20. See also OJ C 102I of 30 March 2020, p. 12. See also Covid_FrontierPostedWorkers_en.pdf (europa.eu), retrieved 20 October 2021.
[21] It is also claimed that this is a case of secondment.
[22] Coronavirus en wonen of werken over de grens: de sociale verzekering verandert in principe niet (svb.nl), retrieved 1 October 2021.
[23] Once again, it should be pointed out that there is a difference between employees in the public sector and other employees: for the first group, homeworking with levying rights allocated to the disbursing state typically does not lead to a shift in taxation.
[24] Article 1a Einkommensteuergesetz.
[25] Article 7.8 Wet IB 2001.
[26] Article 243/1 WIB 1992.

Discoordination and decoupling of social security

If the right to tax is (partly) assigned to Member State A and the insurance obligation or the levying of premiums to Member State B, the State of residence of the employee, this constitutes a (partial) disjunction between taxation and social security contribution. If the premium is higher in the state of residence than in the state of employment, this leads to an increased financial burden for the employer. The employer also faces a heavier administrative burden, due to its obligation to register with the foreign social security authorities. In addition, an A1 certificate must be obtained in the state of residence in order to determine the applicable legislation.[27] It should be noted that falling under a different social security system does not, in itself, have to result in disadvantages for employees. This depends on their (personal) situation and the applicable social security system.

The allocation of the insurance obligation to the state of residence disconnects the so-called non-statutory social security. Supplementary, non-statutory social security' refers to the employment conditions laid down in collective labour agreements, for example supplementary pensions. Working from home can lead to a situation where the statutory pension is being built up in a different country than the supplementary pension, which may affect overall pension accrual.

It should also be borne in mind that the trend towards privatisation casts a shadow over non-statutory social security. One example is the privatisation of the Dutch Sickness Benefits Act; the resulting 'gaps' are often resolved in collective agreements.[28] In diagram form, the following example represents an employee living in Germany and working for a company based in the Netherlands:

Table 2: *Example*: Employee living in Germany and working for a company established in the Netherlands

Working in:		**Premium levy in:**		**Taxation in:**
Germany	**Netherlands**	*legislative*	*additional*	*split?*
0%	100%	Netherlands	Netherlands	100% Netherlands
10%	90%	Netherlands	Netherlands	90% Netherlands & 10% Germany
50%	50%	Germany	Netherlands	50% Netherlands & 50% Germany

Own compilation.

A problem arises when a cross-border worker is subject to the labour law of country X (in the example: the Netherlands) and the social security legislation of country Y (in the example: Germany). Different systems may also apply.[29] Differences arise in particular with the Dutch obligation to continue to pay wages for two years in the event of illness, which is extremely long compared to similar arrangements in Belgium and Germany. In Germany, employers must continue to pay wages for six weeks and in Belgium, generally, for one month.[30] Imagine a Dutch cross-border worker spending three days a week in Germany for work and two days in the Netherlands. In this situation, German labour law has been

[27] Article 16 Regulation No 987/2009.

[28] Grenswerkers in Europa, Een onderzoek naar fiscale, sociaalverzekerings- en pensioenaspecten van grensoverschrijdend werken, Geschriften van de Vereniging voor Belastingwetenschap, no. 257, 2017, p. 197.

[29] Article 7:629 BW.

[30] See Heike Xhonneux, Loondoorbetaling bij ziekte in grensoverschrijdend perspectief, Grensoverschrijdend werken, Vakblad over werken en wonen over de grens, 2019, no. 22.

declared applicable. However, pursuant to Article 13(1)(a) of Regulation No. 883/2004 in conjunction with Article 14(8) of Regulation No. 987/2009, Dutch social security legislation applies. The Dutch *Uitvoeringsinstituut Werknemersverzekeringen* (UWV – the Dutch executive body that pays out social insurance benefits) refuses to pay sickness benefits.[31] The relevant question is whether the Dutch obligation to continue to pay wages can be imposed on a foreign employer, despite the fact that Dutch labour law is not applicable. The Paletta I and Paletta II judgments may be referred to in this respect.[32] The general opinion seems to be that German employers have an obligation to continue to pay wages for 104 weeks. In addition, foreign employers are finding it difficult to insure themselves in the Netherlands against the continued wage payment obligation.[33] This problem of a lack of coordination between the applicable collective labour agreement and social security already existed before the COVID-19 crisis. It will become increasingly pressing, however, if working from home becomes the new normal. As a consequence, German and Belgian employers may think twice before employing Dutch cross-border workers, which would not be conducive to cross-border employment in the Euregion.

Health insurance

The next problem concerns health insurance. Inactive family members of cross-border workers employed in the Netherlands are not insured in the Netherlands.[34] Specific (funding) rules apply to family members of cross-border workers.
It is assumed that inactive family members are not independently insured in their state of residence in terms of work, welfare benefits or pension benefits. Their right to healthcare in the state of residence is derived from that of the cross-border worker. On the basis of Regulation No 883/2004, the state of residence principle applies to inactive family members. However, this principle does not make the inactive family members of a cross-border worker fully insured in their Member State of residence. Regulation 883/2004 lays down special (funding) rules for family members of cross-border workers, whereby the institution (i.e. the health insurance company/fund) in the Member State of residence determines who is to be considered a family member.

Active cross-border workers and their inactive family members are entitled to medical benefits in kind in their state of residence as if they were insured under the legislation of that state.[35] The cost of these benefits in kind shall be borne by the competent Member State, i.e. the Member State where the cross-border worker is employed and thus takes out social insurance.

Like the active cross-border worker, inactive family members residing in Germany or Belgium, for example, may also undergo medical treatment in the Netherlands (under the so-called right of choice).[36] Any costs of medical treatment in the state of residence, in the competent Member State

[31] Heike Xhonneux, Ibid., p. 12.
[32] Case C-45/90, Paletta I, ECLI:EU:C:1992:236 and Case C-2206/94, Paletta II, ECLI:EU:C:1996:182.
[33] See Antwoord op vragen van het lid Omtzigt zoals gesteld tijdens het algemeen overleg inzake de belasting- en sociale zekerheidspositie van grensarbeiders van 26 september 2018, 14 January 2019, kst. 26 834, nr. 43, https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2019Z00290&did=2019D00684; Heike Xhonneux, Ibid., p. 14.
[34] Under certain conditions, inactive family members can take out voluntary AOW/Anw insurance or continue their AOW/Anw insurance.
[35] Article 17 Regulation 883/2004.
[36] Article 18 Regulation 883/2004.

(i.e. the state of employment of the cross-border worker) and in other EU/EEA countries are borne by the competent Member State (in this example: the Netherlands).

If they live in Belgium, Germany or another member state, the inactive family members must pay a contribution to the competent member state (the Netherlands). The term 'contribution' is deliberately used here instead of 'premium', because there is no question of ‘insurance’. Inactive family members are therefore neither insured in the Netherlands nor in their state of residence (Germany or Belgium). Their entitlement to medical care in the state of residence (e.g. Germany or Belgium) and in the competent member state (e.g. the Netherlands) rests on the basis of the rules for reimbursement in Regulation 883/2004 (multilateral convention). Inactive family members are therefore qualified as 'convention beneficiaries'. The healthcare contribution of convention beneficiaries (without own income) is related to the average nominal healthcare premium paid by citizens insured in the Netherlands. The average nominal premium for 2021 is € 1,473, which amounts to € 122.75 per month.[37]

The level and scope of the healthcare packages in the Netherlands and the state of residence obviously differ. As inactive family members must pay their healthcare contributions in the Netherlands, the ratio between the amount of the Dutch contributions and the amount and scope of the healthcare packages in the state of residence may be skewed. The Netherlands solved this problem unilaterally by adjusting the Dutch healthcare contributions to the healthcare level in the country of residence.[38] The contribution payable by these family members under the Dutch Health Insurance Act *(Zorgverzekeringswet* – hereafter: Zvw) is determined by multiplying the usual nominal Zvw premium by the so-called state-of-residence factor. This is a ratio, which is calculated by dividing the average healthcare costs per person in the state of residence by the average healthcare costs per person in the Netherlands. In 2021, the respective state-of-residence factors for Belgium and Germany are 0.7347 and 0.8134. The drawback of using this state-of-residence factor is that it fails to recognise the high level of solidarity in healthcare: as people grow older, they are more likely to suffer from ailments and illnesses. In fact, and more importantly, the costs of care are particularly high exactly in the period right before people die.[39] This means that a (large) number of people who moved abroad for some time after retirement will be back in the Netherlands when they incur most of their health care costs.

Where applicable, inactive family members of cross-border workers are also entitled to the Dutch healthcare allowance (*zorgtoeslag*) linked to their state of residence. The position of inactive family members is well regulated thanks to the right of choice, the introduction of the state-of-residence factor and access to the *zorgtoeslag* linked to their state of residence, if applicable. Payments of the nominal healthcare contribution to the CAK (Dutch Central Administration Office, hereafter: CAK) usually run smoothly.[40]

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[37] Regeling van de Minister voor Medische Zorg van 12 oktober 2020, kenmerk 1756590-211630-Z, houdende vaststelling van de geraamde gemiddelde nominale premie voor 2021, Stcrt. 2020, 53967.

[38] Article 6.3.1 Regeling zorgverzekering. The country of residence factor has been introduced as a result of a ruling by the court in The Hague of 31 March 2006, no. KG 06/125, ECLI:NL:RBSGR:2006:AV7778, V-N 2006/21.17.

[39] F. van Strien and R. Bhageloe-Datadin, Ontwikkeling en financiering van de zorglasten sinds 2006, CBS, Serie De Nederlandse Economie, 2015/07.

[40] See www.hetcak.nl/regelingen/financiele-informatie-verdragsgerechtigden/werken-in-nederland-wonen-in-buitenland, retrieved 1 October 2021.

However, in addition to the above problem, there are a number of (residual) problems. One problem arises with supplementary (private) insurance policies: inactive family members living outside the Netherlands cannot take out supplementary insurance in the Netherlands. They can, however, take out supplementary insurance in their country of residence. Problems also arise when inactive family members undergo medical treatment outside the EU/EEA (so-called third countries). The question remains whether there is such a thing as 'global coverage' for this group of people who fall under Dutch responsibility.

As soon as inactive family members (temporarily) start working in their country of residence or (as a cross-border worker) in a neighbouring country, a complicated administrative 'flashlight relationship' emerges. The *Commissie Grensarbeiders* II (Cross-border Workers Commission II)[41] has already recommended that family members living in Germany and Belgium be given the option of registering with the Dutch health insurance provider of the principal insured person – i.e. the active cross-border worker. This situation also already existed under the previous *Ziekenfondswet* (health insurance act; ZFW).[42]

Permanent establishment

Another potential problem concerns the creation, for tax purposes, of permanent establishments (hereafter: PE) of the employer when employees work from home. Some companies were concerned that working from home would constitute a PE. If there is a particular PE in the source state, that state may tax the income attributed to that PE under Article 7 of the OECD Model Tax Convention. The definition of a PE is laid down in Article 5 of the OECD Model Tax Convention. The OECD noted that the COVID-19 situation is unlikely to cause changes to the determination of PEs. The exceptional and temporary changes in the location where employees perform their work activities due to the COVID-19 crisis, e.g. at home, should not constitute the creation of new PEs on behalf of their employers. Similarly, the temporary conclusion of contracts in the homes of employees or agents due to the COVID-19 crisis should not constitute the creation of PEs on behalf of companies. A PE in the form of a construction site will not cease to exist when work is temporarily interrupted.

The OECD notes that a PE must generally have a degree of permanence and be at the disposal of an undertaking for it to be considered a fixed place of business through which the business of that undertaking is wholly or partly conducted. This is not the case with the COVID-19 provisions: individuals who stay at home to work remotely usually do so as a result of government directives. Therefore, this constitutes force majeure rather than a requirement imposed by an enterprise. Thus, given the extraordinary nature of the COVID-19 crisis, and to the extent that it does not become the new norm over time, teleworking from home (i.e., the home office) would not constitute the creation of a PE of the company/employer, also because such activity lacks a sufficient degree of permanence or continuity or because the company, except through that one employee, has no access to or control over the home office. In addition, the employer provides office space, which, under normal circumstances, is at the private disposal of the employees. The OECD stressed that this only applies 'to the extent that it does not become the new norm over time'.[43] The question is what this quote means;

[41] Report of the Commissie grensarbeiders II, The Hague, 29 April 2008.

[42] This advice was also issued by the College voor zorgverzekeringen (Health Insurace Board – CVZ) in 2007; see CVZ-advies aan de Minister van VWS inzake Regelgeving verdragsgerechtigden, 20 July 2007, p. 2-4.

[43] OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis, 3 April 2020, para. 9.

it seems to say that employees who work from home after the pandemic are forming a PE of the employer. This could lead to, for instance, payroll tax liability for the employer in the state where the employee lives and works.[44] Therefore, the laws of the relevant states and their policies regarding PEs must be consulted, which leads to an increase in the administrative burden. Note that this burden has not been included in this report.

3. Cross-border working from home after the crisis

3.1 Tax and insurance obligations according to the normal rules

If the normal rules of the tax treaty and Regulations 883/2004 and 987/2009 are applied, the following diagram represents the situation in which a cross-border worker works for an employer in another Member State[45]:

Table 3: Applicable law based on three scenario's

Working from home	**Taxation**	**Premium**
100% working from home	State of residence	State of residence
4 days/week of homeworking, 1 day in the state of employment	State of employment/ residence	State of residence
4 days/week in work state, 1 day of homeworking	Work/residence status	working state

Note that civil servants and employees in the public sector generally remain taxable in the state of employment, in accordance with the levy-right principle of the disbursing state.

Description of employers' policies

A number of employers have formulated or are in the process of formulating a homeworking policy. A number of policy plans indicate that they promote working from home, but cross-borders workers may not work more than 25% of their work hours at home in their state of residence. In our opinion, this restriction is imposed in connection with the rule laid down in the implementing regulation No 987/2009 that the insurance obligation shifts from the state of employment to the state of residence

[44] See for example Article 6(2) of the Wet op de loonbelasting 1964 (Dutch Payroll Tax Act): 'Anyone not residing in or not established in the Netherlands shall only be considered a withholding agent to the extent that they:
a. have a permanent establishment in the Netherlands for the purpose of carrying on their business, profession or other occupation, or have a permanent representative residing or established in the Netherlands; or
b. employ one or more persons whose wages are subject to income tax, keep the payroll records in the Netherlands for these persons, and have reported to the tax inspector as the withholding agent for these persons'. (Own translation.)
[45] Grenswerkers in Europa, Een onderzoek naar fiscale, sociaalverzekerings- en pensioenaspecten van grensoverschrijdend werken, Geschriften van de Vereniging voor Belastingwetenschap, no. 257, 2017, p. 196.

if 25% or more of the work hours are spent and/or salary is earned in the state of residence.[46] Another possibility is that employers will start forcing cross-border workers to work in their state of employment, arguing that the fiscal, social security and labour-law consequences make the situation of cross-border workers residing abroad incomparable to that of employees residing and working in the Netherlands.

3.2. New initiatives

Meanwhile, new initiatives are being developed to formalise homeworking. For example, a bill entitled *Wet werken waar je wil* (the Work where you want Act) was submitted in the Netherlands on 21 January 2021 by Lower House members Van Weijenberg (from D66) and Smeulders (from GroenLinks). In principle, employees have the right to work from home, and they may submit a request to determine the place of work in the same way as is already possible with regard to working time and working hours.[47] The *Wet flexibel werken* (Flexible Work Act)[48] needs to be amended accordingly. Under this Act, employees are granted the possibility, under certain conditions, to alter the agreed time worked, working hours and workplace.

During the internet consultation on the bill, attention was drawn to cross-border workers. The Dutch *Raad van State* (Council of State – RvS) also commented on the subject, which should be regulated by amending the bilateral agreements with Germany and Belgium, leading to a relaxation of the premium and tax obligations. The initiators responded as follows:

> '*This would allow cross-border workers to retain ample opportunities to work from home even after the corona crisis. The initiators feel much sympathy for this request but also note that it cannot be regulated in the present bill. The initiators therefore intend to call on the government to enter into talks with the aforementioned countries in order to relax the rules on tax and premium obligations.*[49] The Council of State notes the following in this regard: '*However, in this regard, the question must be answered as to how to ensure that the employee is sufficiently aware of such possible consequences, and furthermore, what the consequences will be for the employer. Here too, the question arises in which cases the employer can justifiably refuse a request to work from home because of these consequences. If it is not clear whether these consequences might be pressing reasons for rejecting such a request, legal uncertainty will ensue for both the employer and the employee. Proper preparation of a legislative amendment requires that such problems be adequately addressed first*'.

[46] See Article 14(8) of Regulation No 987/2009. The criterion must be set taking into account the next 12 months. See Article 14(10) of Regulation No 987/2009.
[47] Voorstel van wet van de leden Van Weyenberg en Smeulders tot wijziging van de Wet flexibel werken in verband met het bevorderen van flexibel werken naar arbeidsplaats (Wet werken waar je wilt), Parliamentary Papers II 2020/21, 35 714, no. 2. Both of the above MPs have meanwhile been replaced by MPs De Jong and Maatoug, respectively.
[48] Stb. 2015, 245.
[49] Kamerstukken II 2020/21, 35 714, no. 3, p. 13. (Own translation.)

Therefore, these questions must first be clarified to be able to finalise the bill, also referring to the *Leidraad Grenseffecten* (Guideline on Cross-Border Effects) as part of the *Integraal Afwegingskader* (Integral Assessment Framework – IAK) for legislation.[50]

The report mentions the comment made by the *Stichting Geen Grens* (No Border Foundation) as to whether the current policy on cross-border workers could be continued and what this might mean for new employment. Another question is whether the bill should be limited to the neighbouring countries.[51] The initiators are of the opinion that amendment of the bilateral tax treaties is the most appropriate route to mitigate the bottlenecks. They do not expect the financial consequences for employers who employ cross-border workers to substantially differ from those for other employers.[52] A potential solution for neighbouring countries should have priority over a solution for all EU Member States.[53]

An important question raised by the bill is whether a distinction can be made between workers resident in the Netherlands and non-resident workers, i.e. the cross-border workers. If it becomes a right[54] to work from home, the question arises whether this right is a social advantage within the meaning of Article 7 Regulation No. 492/2011.[55] The free movement of workers is an important consideration for the application of Article 7 Regulation No 492/2011. Pursuant to Article 1 Regulation No 492/2011, every national of a Member State, irrespective of their place of residence, has the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the laws, regulations and administrative provisions governing the employment of nationals of that state. Social advantages may be defined as follows: 'all those [advantages] which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community'.[56] The EU Court of Justice further ruled: 'Article 7 (2) of that regulation[57] must be interpreted as meaning that the grant of such a social advantage may not be made subject to the requirement that the claimant should have actually resided within the territory of a member state for a prescribed period where that requirement is not imposed on nationals of that member state'.[58]

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[50] Advice issued by the RvS (Council of State), Kamerstukken II 2020/21, 35 714, no. 4, p. 8-9. (Own translation.)
[51] Kamerstukken II 2020/21, 35 714, no. 8, pp. 13-14.
[52] Kamerstukken II 2020/21, 35 714, no. 9, p. 17.
[53] Kamerstukken II 2020/21, 35 714, no. 9, p. 24.
[54] No right(s) can be derived from the urgent government advice to work from home. See Rb Gelderland 16 June 2020, no. 8545345, ECLI:NL:RBGEL:2020:2954, JAR 2020/169. Mentioned in: Genoteerd, Werken vanuit huis, Loyens & Loeff October 2021, no. 141, p. 4.
[55] Regulation (EU) No 492/2011 of 5 April 2011 on freedom of movement for workers within the Union, OJ L 2011/141, p. 1.
[56] Case 249/83, Hoeckx, ECLI:EU:C:1985:139, para. 20.
[57] This refers to Regulation 1612/68, which was applicable in this judgment. Article 7 of its successor, Regulation No 492/2011, has been formulated in identical terms.
[58] Case 249/83, Hoeckx, ECLI:EU:C:1985:139, para. 25.

Belgium and Germany

In Belgium, an additional administrative measure relating to teleworking was imposed during the crisis: employers had a registration obligation for employees present on the work floor. What else needs to be regulated in the area of telework after the crisis is currently being discussed in the *Nationale Arbeidsraad* (National Labour Council). Outcomes are expected in the autumn of 2021.[59] Until then, the *Overlegcomité* (Consultative Committee)[60] has already called on all employers to structurally embed teleworking.[61]

In Germany, a private member's bill has also been submitted at the federal level, so as to promote and facilitate mobile working. However, this bill will not be debated for some time.[62]

Benelux

The Benelux Parliament has called upon the relevant governments to study and evaluate the problems associated with teleworking, with a particular focus on cross-border work in the Benelux, and to draw conclusions for policy making. In addition, it calls for the study and implementation of a harmonized policy with regard to the fiscal and social status of the cross-border workers within the Benelux, including the self-employed, the members of the liberal professions, company managers and seconded officials. Special attention should be paid to the possibility of uniformly bringing the number of permitted days of work outside one's state of employment to 48 for cross-border workers in the three Benelux countries.63 This would allow these workers to work from home approximately one day per week and avoid the problem of working in the state of residence for more than 25% of the time, whereby the social insurance obligation would shift to the state of residence. The number 48 seems to be based on the tax arrangement for cross-border workers that exists between Belgium and Luxembourg. In this arrangement, these workers are allowed to work a maximum of 24 days outside their state of employment, either in the state of residence or in a third-party state, while the 24 days remain allocated to the state of employment.64 As agreed on 31 August 2021, this number will increase to 34 working days as of January 2022.65

Europe?

Under the current Regulation, the 25% criterion determines the applicable rules of the state of residence. Any amendment to Regulation 883/2004 must be decided in accordance with the ordinary procedure involving the Member States and the European Parliament as co-legislators. The current

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[59] Commissie voor sociale zaken, werk en pensioenen, 22 June 2021.

[60] The Overlegcomité (Consultative Committee) is a body in which the Prime Ministers and members of the various Belgian governments consult with each other in order to maintain some coherence in policy and prevent or resolve conflicts. As a result of the latest state reform, Belgium currently has six governments.

[61] Info-coronavirus.be, Overlegcomité – vanaf 1 september vallen heel wat beperkingen weg, https://www.info-coronavirus.be/nl/news/occ-2008/, retrieved 25 October 2021.

[62] See BMAS -Gesetzesinitiative zur mobilen Arbeit, retrieved 1 October 2021.

[63] Benelux Interparlementaire Assemblee, Aanbevelingen met betrekking tot de verbetering van de situatie van grenswerknemers op het vlak van mobiliteit, fiscaliteit en sociale zekerheid, in het bijzonder door de toekenning van een specifiek statuut aan de afstandskantoren, 23 March 2021, No. 920/2.

[64] Circular AAFisc No. 22/2015 (No. Ci.700.520) dated 1 June 2015.

[65] Avenant bij de Overeenkomst tussen het Koninkrijk België en het Groothertogdom Luxemburg tot het vermijden van dubbele belasting en tot regeling van sommige andere aangelegenheden inzake belastingen naar het inkomen en naar het vermogen, en het desbetreffende Slotprotocol, ondertekend te Luxemburg op 17 september 1970, zoals gewijzigd door de Avenanten van 11 december 2002, van 16 juli 2009 en van 5 december 2017 of 1 August 2021. Available here.

proposals to amend Regulation 883/2004 do not include an amendment regarding the 25% criterion or working from home. Such an amendment would take a long time to approve.

In response to parliamentary questions, the European Commission replied that the European Labour Authority (ELA) is currently collecting information on the measures taken by Member States during the crisis. The impact of teleworking should be examined and good practices identified.[66] A descriptive report using country fiches was published by the ELA in July 2021.[67] As yet, no concrete proposals have been made at European level. More recently, parliamentary questions have again been raised, but at the time of writing the Commission has yet to respond.[68]

Possible homeworking protocol (fiscal)

The Netherlands is exploring, together with Germany, whether it is possible to include a specific arrangement in the tax treaty for cross-border workers' homeworking days.[69] In a recent letter, such an arrangement was also advocated in relation to Belgium. In the same letter, the Deputy Minister of Finance outlines the consequences for a German cross-border worker after expiration of the temporary agreements, i.e. when the normal rules of conduct apply again; the state of residence would gain the right of taxation on the salary earned on the days worked from home.[70]

The *Sociaal-Economische Raad* (Dutch Social and Economic Council – hereafter: SER) has made recommendations to facilitate working from home.[71] The Minister of Social Affairs and Employment, Koolmees, has asked the SER to also consider cross-border workers.[72] The Minister recently promised that he and the State Secretary for Finance will map the possibilities for adjusting the international social security and tax system with regard to homeworking. Further information will follow before the end of the year.[73]

Reviewing the initiatives, one might state that the wheels are somewhat in motion in terms of cross-border homeworking, but there are no concrete plans as yet. Hopefully, clarity will be achieved before the current measures expire.

3.3. Articles 8(2) and 16 Regulation 883/2004

The question arises as to whether there are other possibilities for adapting the rules on cross-border homeworking. In this regard, Article 8(2) and Article 16 of Regulation No 883/2004 deserve to be

[66] Answer provided by Mr Schmit on behalf of the European Commission, No E-002649/2021, 20 September 2021 to a Written Question by Cindy Franssen (PPE), No E-002649/2021, 17 May 2021 on improving the coordination of teleworking.
[67] ELA, https://www.ela.europa.eu/en/news/ela-collects-country-specific-information-impact-teleworking-during-covid-19-pandemic, retrieved 25 October 2021.
[68] Question to the Commission by Sara Matthieu, No. E-004443/2021, September 29, 2021 on the continuing impact of teleworking on cross-border workers.
[69] See https://www.rijksoverheid.nl/actueel/nieuws/2021/03/24/nederland-en-duitsland-wijzigingen-het-belastingverdrag (retrieved 1 October 2021). See also Kamerstukken II 2019/20, 26 834, no. 48, p. 10 and Kamerstukken II 2020/21, 31066, no. 794 .
[70] See *letter from the State Secretary of Finance dated August 31, 2021, no. 2021-0000145512, V-N 2021/37.6.*
[71] Advies Mobiliteit en de coronacrisis | SER, retrieved 1 October 2021.
[72] Letter from the Minister of Social Affairs and Employment, 30 March 2021, no. 2021-0000057245.
[73] Kamerstukken II 2021/22, 25 883 and 25 295, no. 419.

examined in more detail. Article 16 Regulation 883/2004 provides for the possibility to allocate the insurance obligation to a Member State other than the Member State resulting from the allocation rules (Article 11-15 Regulation 883/2004). Article 16(1) of Regulation 883/2004 states that *'[t]wo or more Member States, the competent authorities of these Member States or the bodies designated by these authorities may by common agreement provide for exceptions to Articles 11 to 15 in the interest of certain persons or categories of persons*'.

It follows from the Practical Guide that the Administrative Commission is of the opinion that, in accordance with Article 16 of Regulation 883/2004, an exception to the allocation rules may be made in respect of posting if this posting is temporary, if the exception is in the interest of the worker concerned and if an application has been submitted to that effect.[74] Both Member States must give their consent if Article 16 of Regulation 883/2004 is applied, and administrative advantages should not be the only reason for concluding an Article 16 agreement; the interests of the worker or group concerned must be paramount.[75] These so-called Article 16 procedures are often used for postings but have rarely been used to make an exception for a group of workers. One example is the Dutch *Rijnvarendenovereenkomst*, legislation concerning Rhine boatmen, for whom a separate agreement was concluded.[76]

The question is whether the above 25% criterion will be sufficient to prevent a switch in the applicable social security system if homeworking keeps growing. It would allow only one day of homeworking in a five-day work week, whereas the general assumption is that workers will be spending two days working from home. This would make a 40% threshold seem more reasonable than 25%.[77] Thus, one might argue that an extension is 'in the interest of certain persons or categories of persons'.

In addition to Article 16 of Regulation 883/2004, it should also be examined whether Article 8(2) of Regulation 883/2004 could play a role. Article 8(2) of Regulation 883/2004 states that

> '*[t]wo or more Member States may, as the need arises, conclude conventions with each other based on the principles of this Regulation and in keeping with the spirit thereof*'.[78]

Thus, under Article 8 of Regulation 883/2004, two or more Member States may, where necessary, conclude conventions with one another based on the principles of the Regulation and in keeping with its spirit. It should be examined whether the countries of the relevant Euroregion might conclude an agreement based on Article 8(2) of Regulation 883/2004 to set a higher percentage than 25. This could be addressed in the context of Benelux in the cooperation with Germany.

[74] Practical guide to applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland, 2013, p. 11.
[75] Ibid., p. 18.
[76] Overeenkomst krachtens artikel 16, eerste lid, van verordening (EG) 883/2004 betreffende de vaststelling van de op rijnvarenden toepasselijke wetgeving, Stcrt. 2011, 3397.
[77] Reference can be made here to the initial results from surveys and studies, which show a significant difference between homeworking before COVID-19 and the desire to, usually partially, continue to work from home after COVID-19. See also Eurofound, 2021, t.a.p.
[78] See also Article 8(2) of Regulation No 987/2009: 'Member States may conclude between themselves, if necessary, arrangements pertaining to the application of the conventions referred to in Article 8(2) of the basic Regulation provided that these arrangements do not adversely affect the rights and obligations of the persons concerned and are included in Annex 1 to the implementing Regulation.'

4. Calculations[79]: economic effects on employees and employers

4.1. Introduction

The question is how the current applicable rules on tax and insurance obligations affect the net incomes of a person working entirely in their state of employment and of a cross-border worker partly working from home in their state of residence for a single employer. The following three situational case studies are presented below:

1. a single person with a salary of € 36,500 (modal income 2021);
2. a married couple with two children (aged 8 and 10), where the partner has no income, and
3. a married person with two children (aged 8 and 10) and a partner with an own income of € 15,000. The partner lives and works in the same state and is therefore not a cross-border worker. A five-day work week is assumed.

Further calculations have been made based on the same situations, but assuming a salary of € 55,500 (approximately 150% of the average income in 2021).

The gross salary is assumed to be the same in the Netherlands, Belgium and Germany. With regard to the children, any facilities in tax legislation can be taken into account.

There are three bilateral situations: Netherlands-Belgium, Netherlands-Germany and Belgium-Germany.

Let us take the relationship between the Netherlands and Belgium as an example. A Belgian cross-border worker lives in Belgium and works in the Netherlands, together with a Dutch cross-border worker's neighbour. The Dutch neighbour pays taxes and premiums in his country of residence. This neighbour has the same salary as the Belgian cross-border worker and is in the same circumstances (e.g. in terms of partner and children). The Dutch cross-border worker has a colleague who is the neighbour of the Belgian border worker. The Belgian neighbour pays taxes and premiums in his country of residence. The relationships between Germany and the Netherlands and Germany and Belgium have the same structure.

It should be noted that the calculations below only show the impact of the current applicable rules on the net salary. Other effects, such as any positive or negative effects of a switch between social security systems, have not been included in this report.

4.2. Overview of calculations

Note that the tables with calculations are included as appendices to this dossier. The overviews include the headings gross salary, tax BE, DE, NL, premiums owed by the employee, refunds as per compensation scheme, net income, employer premiums and labour costs. Also included in the

[79] Calculations by Ernst & Young Tax Advisors LLP.

Appendix is an overview of some of the figures and rates used in the calculation of the situational case studies.

a. Comparison with neighbour/colleague, working in state of employment 100% of the time

The figures whereby the cross-border worker works in the state of employment for 100% of their time show differences between the cross-border worker and their neighbour who lives and works in the state of residence of the cross-border worker on the one hand; and between the cross-border worker and their colleague who lives and works in the state of employment of the cross-border worker on the other.

By way of illustration: for single persons, it can be concluded that, at a salary of €36,500, a cross-border worker residing in Belgium and working in the Netherlands 100% of the time has more net income than his neighbour who lives and works in Belgium (€27,225 compared to €24,443). Compared to his colleague who lives and works in the Netherlands, the net difference is small (€ 27,225 compared to € 27,557). A cross-border worker who lives in the Netherlands and works in Belgium 100% of the time, on the other hand, has a lower net income than his neighbour (€ 24,443 compared to € 27,557). These differences increase at a salary of €55,500. In the relationship between the Netherlands and Germany, the cross-border worker living in Germany enjoys more net income than his neighbour living and working in Germany. The differences seem to be the smallest in the relation between Belgium and Germany: at a salary of €36,500, for example, we observe a variation from €24,276 to €24,443.

Both at a salary of €36,500 and at a salary of €55,500, the employer's premiums and the labour costs are higher for a Belgian employer than for a Dutch employer in the event that the single person works entirely in their state of employment. The same applies to the German employer in the relationship between the Netherlands and Germany. In the relationship between Belgium and Germany, the employers’ premiums and labour costs are somewhat closer together.

These differences arise from the different applicable social security legislations; the premiums and those liable for paying them; the way in which the tax legislation is set up; and the differences in tax rates.

b. Application of current regulations to working from home (two days a week)

In this section, a distinction is made between the single cross-border worker; the cross-border worker who has a partner with no income and two children aged 8 and 10; and the cross-border worker who has a partner with an income of €15,000 and two children aged 8 and 10. If the cross-border worker works from home two days a week, the application of the current rules yields the following results:

*Single – **Netherlands-Belgium***

If the Belgian cross-border worker works from home two days a week, they enjoy a net increase from € 27,225 to € 28,606 at a salary of € 36,500. The employer, on the other hand, faces rising premiums and labour costs (from € 6,426 to € 8,522 and from € 42,926 to € 45,022, respectively). The same effect can be observed at a salary of € 55,500.

The Dutch cross-border worker benefits even more substantially (going from € 24,443 to € 27,557). Employer premiums and labour costs fall (from € 8,522 to € 6,426 and from € 45,022 to € 42,926, respectively). We observe the same effects at a salary of € 55,500.

It can be concluded that single Belgian cross-border workers enjoy a net improvement when working from home, but they become more expensive for their Dutch employers. Single Dutch cross-border workers also benefits in net terms, while they becomes cheaper for their Belgian employers. This is largely related to the fact that the social security premiums for employers are higher in Belgium than in the Netherlands.

*Single – **Netherlands-Germany***

If a German cross-border worker works from home, their net income decreases while employer premiums and labour costs increase. At a salary of €55,500, for example, the German cross-border worker enjoys an increase in net income (from €37,230 to €38,225). When working from home, the net income of the Dutch cross-border worker increases while employer premiums and labour costs decrease. This also applies at a salary of €55,500.

It can be concluded that single German border workers face a net disadvantage and become more expensive for Dutch employers. Single Dutch cross-border workers enjoy a net gain and become cheaper for their German employers.

*Single - **Belgium-Germany***

A cross-border worker living in Germany and working partly from home and partly in Belgium experiences a loss of income from €24,443 to €23,798 at a salary of €36,500, while employer premiums and labour costs show a slight decrease. A cross-border worker living in Belgium and working in Germany experiences an increase in income (from €24,424 to €27,104), while employer premiums and labour costs increase.

At a salary of €55,500, the differences in net income between German and Belgian cross-border workers working from home are particularly striking: the single German cross-border worker has a net income of €29,871, whereas the Belgian cross-border worker has a net income of €36,892. Otherwise, homeworking shows the same picture as at a salary of €36,500.

It can be concluded that a single German cross-border worker working from home faces a net disadvantage and a single Belgian cross-border worker working from home enjoys a net advantage compared to working in their respective states of employment for 100% of the time. Employer premiums and labour costs decrease in the former case, while they increase in the latter.

*A cross-border worker with partner with no income and two children (8 and 10 years old) – **Netherlands-Belgium***

A Belgian cross-border worker who partly works from home enjoys an increase in net income of €3,386 (from €27,557 to €30,943) at a salary of €36,500, and an increase of €6,228 (from €36,975 to €43,203) at a salary of €55,500. Employer premiums and labour costs, on the other hand, show an increase, by € 2,096 and € 3,187, respectively. The opposite effect applies to the reverse situation: a Dutch cross-border worker who works in Belgium experiences a decrease in net income of € 2,199 (from € 29,756 to € 27,557) at a salary of € 36,500 and of € 1,725 (from € 38,955 to € 37,230) at a salary of € 55,500. However, employer premiums and labour costs decrease by € 2,096 and € 3,187, respectively.

*Cross-border worker with partner with no income and two children (8 and 10 years old) – **Netherlands-Germany***

Especially at a salary of € 55,500, German cross-border workers working in the Netherlands see their net income increase by € 2,841 (from € 37,230 to € 40,071). Employer premiums and labour costs, on the other hand, increase. Dutch cross-border workers who work in Germany also enjoy an increase in net income, albeit only slightly at a salary of € 55,500 (from € 38,546 to € 38,556). Also, the employer premiums and the labour costs decrease.

*Cross-border worker with partner with no income and two children (8 and 10 years old) – **Belgium-Germany***

It is striking that a German cross-border worker faces a decrease in income of €4,792 (from €29,756 to €24,964) at a salary of €36,500 and employer premiums and labour costs decrease, while Belgian cross-border workers experience an increase in net income of €2,299 (from €27,619 to €29,918) and employer premiums and labour costs increase. At a salary level of €55,500, the German cross-border worker suffers a decrease in net income of no less than €7,238 (from €38,955 to €31,717), whereas their Belgian counterpart enjoys an increase of €1,413 (from €38,219 to €39,626).

It can be concluded that, in this situation, particularly the German cross-border worker suffers a large drop in income at a salary level of €55,500.

*Cross-border worker with partner (income € 15.000) and two children (8 and 10 years old) – **Netherlands-Belgium***

Both Belgian and Dutch cross-border workers benefit if they work partly from home: € 2,132 (from € 27,357 to € 29,489) and € 1,109 (from € 26,448 to € 27,557), respectively, at a salary level of € 36,500. The employer premiums and labour costs increase and decrease, respectively. The same can be said for a salary of € 55,500.

*Cross-border worker with partner (income € 15,000) and two children (8 and 10 years old) – **Netherlands-Germany***

German cross-border workers suffer a net loss of €1,074 (from €27,557 to €26,483) if they work partly from home at a salary level of €36,500, while the employer premiums and labour costs rise. At a salary of € 55,500, these cross-border workers enjoy a net income increase of € 1,117 (from € 37,230 to € 38,347), while the employer premiums and labour costs increase. In the opposite situation, Dutch cross-border workers benefit from an increase in net income of € 2,175 (from € 25,667 to € 27,842) and € 1,677 (from € 36,879 to € 38,556), respectively, at a salary of either € 36,500 or € 55,500, while the employer premiums and labour costs decrease.

Cross-border worker with partner (income € 15,000) and two children (8 and 10 years old) – ***Belgium-Germany***

German cross-border workers working in Belgium experience a decrease in income of €2,567 (from €26,448 to €23,881), while, conversely, Belgian cross-border workers working in Germany enjoy an increase of €2,035 (from €25,841 to €27,876) at a salary of €36,500. At a salary level of €55,500, the effect is also significant: German cross-border workers suffer a decrease in net income of € 4,744 (€ 34,737 to € 29,993). Employer premiums and labour costs drop for German cross-border workers, while they increase for their Belgian counterparts.

It can be concluded that, in this situation, particularly the Belgian and Dutch cross-border workers in the relationship between the Netherlands and Belgium benefit in net terms from working from home. Dutch employers, however, are faced with an increase in employer premiums and labour costs. In the relationship between Belgium and Germany, German cross-border workers are exposed to strong income effects.

c. Diagram

In diagram form, the situation of cross-border workers working partially from home as compared to working entirely in their state of employment presents the following picture of net incomes and employer premiums and labour costs:

The overview includes the salary levels of € 36,500 / € 55,500. A '+' represents an increase of the employee's net income and a decrease of the employer's premiums and the labour costs; a '-' stands for a decrease of the employee's net income and an increase of the employer premiums and labour costs.

Single – ***Netherlands-Belgium***

Working from home €36.500/€55.500	**Resident BE NL EMPR (60% NL, 40% B)**	**Resident NL, BE EMPR (60% BE, 40% NL)**
Net	+/+	+/+
Premiums EMPR	-/-	+/+
Labour costs	-/-	+/+

Single – ***Netherlands-Germany***

Working from home €36.500/€55.500	**Resident DE NL EMPR (60% NL, 40% DE)**	**Resident NL, DE EMPR (60% DE, 40% NL)**
Net	-/+	+/+
Premiums EMPR	-/-	+/+
Labour costs	-/-	+/+

*Single - **Belgium-Germany***

Working from home €36.500/€55.500	**Resident DE BE EMPR (60% B, 40% DE)**	**Resident BE, DE EMPR (60% DE, 40% BE)**
Net	-/-	+/+
Premiums EMPR	+/+	-/-
Labour costs	+/+	-/-

*Cross-border worker and partner (no income), 2 children (8 and 10 years) – **Netherlands-Belgium***

Working from home €36.500/€55.500	**Resident BE NL EMPR (60% Nl, 40% B)**	**Resident NL, BE EMPR (60% BE, 40% NL)**
Net	+/+	-/-
Premiums EMPR	-/-	+/+
Labour costs	-/-	+/+

*Cross-border worker and partner (no income), 2 children (8 and 10 years) – **Netherlands-Germany***

Working from home €36.500/€55.500	**Resident DE NL EMPR (60% Nl, 40% DE)**	**Resident NL, DE EMPR (60% DE, 40% NL)**
Net	+/+	+/+
Premiums EMPR	-/-	+/+
Labour costs	-/-	+/+

*Cross-border worker and partner (no income), 2 children (8 and 10 years) – **Belgium-Germany***

Working from home €36.500/€55.500	**Resident DE BE EMPR (60% B, 40% DE)**	**Resident BE, DE EMPR (60% DE, 40% BE)**
Net	-/-	+/+
Premiums EMPR	+/+	-/-
Labour costs	+/+	-/-

*Cross-border worker and partner (€ 15,000), 2 children (8 and 10 years) – **Netherlands-Belgium***

Working from home €36.500/€55.500	**Resident BE NL EMPR (60% NL, 40% B)**	**Resident NL, BE EMPR (60% BE, 40% NL)**
Net	+/+	+/+
Premiums EMPR	-/-	+/+
Labour costs	-/-	+/+

*Cross-border worker and partner (€ 15,000), 2 children (8 and 10 years) – **Netherlands -Germany***

Working from home €36.500/€55.500	**Resident DE NL EMPR (60% NL, 40% DE)**	**Resident NL, DE EMPR (60% DE, 40% NL)**
Net	-/+	+/+
Premiums EMPR	-/-	+/+
Labour costs	-/-	+/+

*Cross-border worker and partner (€ 15,000), 2 children (8 and 10 years) – **Belgium-Germany***

Working from home €36.500/€55.500	Resident DE BE EMPR (60% B, 40% DE)	Resident BE, DE EMPR (60% DE, 40% BE)
Net	-/-	+/+
Premiums EMPR	+/+	-/-
Labour costs	+/+	-/-

It can be concluded that the size of the income effect must be assessed for each individual situation, which may turn out positive or negative for the cross-border worker. Often, however, an increase in the net income of the cross-border worker correlates with an increase in employer premiums and labour costs. The question is whether employers are prepared to bear the additional costs.

5. Conclusion and recommendations

5.1 Evaluation of the themes of the dossier

Socio-economic and sustainable development

The report has outlined the financial consequences of (partial) working from home for both employers and cross-border workers. These consequences vary from situation to situation and can be both positive and negative. The potential consequences can be monetary, in terms of the tax and social security burdens, but may also include an increase in the administrative burden, loss of tax facilities, disconnection from non-statutory social security, and discrepancies in the levying of tax and premiums. In addition to the personal financial consequences, the increased costs and complexity of working from home can hinder the work as a cross-border worker, the recruitment of new cross-border workers or the facilitation of working from home for cross-border workers. This has consequences for the sustainable socio-economic development of the cross-border labour market as a whole. While it is still too early to assess this impact, it has been noted that both employers and employees are questioning how to shape the policies regarding working from home for cross-border workers and that no concrete policy actions have yet been proposed.

Euroregional Cohesion and European Integration

In order to avoid financial consequences, it is conceivable that employers start distinguishing between resident and non-resident employees by denying cross-border workers the opportunity to work from home. The proposed bills raise the important question of whether this type of distinction is allowed. The Dutch bill provides for an exception in the event of a 'serious business or departmental interest'; the explanatory memorandum refers to, among other things, serious problems of a financial or organisational nature. It is unknown whether this comprises the cross-border effects of working from home. If so, this could impede the free movement of workers. In addition, the question has been discussed whether working from home should be considered a social benefit under Regulation 492/2011 if it is qualified as an entitlement. If so, the non-discrimination provisions are likely to preclude such a social benefit from being conditional on residence. Also from the perspective of euregional cohesion, these effects fail to do justice to the equality between cross-border workers and their colleagues (or neighbours) who do not work across borders. Thus, it would be inconsistent with the principles of European integration and Euroregional cohesion to make such a distinction.

In conclusion, the present framework fails to take sufficient account of cross-border workers working from home and may hinder cross-border employer cooperation and the creation of a 360-degree labour market as an essential element of cross-border integration. However, it is not possible to assess the concrete consequences at this stage. As the new legislation on homeworking becomes more concrete, it will become necessary to examine the actual effects of policymaking on cross-border cohesion.

5.2 Recommendations

This assessment report carries the following recommendations:

1. Without changes to the current rules, a further extension of working from home by cross-border workers and their employers would introduce additional complexity for both employees and employers in terms of social security and taxation. This would not be conducive to the functioning of a cross-border labour market. If the legislation is not amended, it is to be suspected that certain forms of cross-border work in which homeworking plays an important role (e.g. working at a university) will become less attractive.
2. There is a need for a uniform definition of homeworking.
3. There should be coordination between tax and insurance obligations. The OECD and the Administrative Commission should act jointly in this regard.
4. Further research should be devoted to the interpretation of the Paletta I and Paletta II judgements concerning the applicability of social security legislation in cases where the labour law of another Member State is applicable. This applies in particular in situations where major differences exist between the Member States concerning the length of the obligation to continue to pay wages.
5. It should be examined whether Article 8 of Regulation 883/2004 might provide a way to increase the percentage criterion from 25 to 40% in situations where work is being performed for a single employer in two states.

As regards the calculations, it can be concluded that partial working from home by cross-border workers has positive effects on their net income in some cases and negative effects in others, depending on the situation. In many cases, the employer premiums and labour costs increase. It should be noted, however, that the budgetary impact is only one of the elements to be taken into account when working from home. The consequences of a switch in social security system can also be either beneficial or unfavourable.

Appendices

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Annex 1: Overview calculations singles NL-BE, NL-DE, BE-DE

2021 pro-forma calculations / entire year / single / no deductions / Income tax (IB) calculations / municipal taxes 7% / including tax credits

	19	20 = 1	21 = 1	
SS in employment state	**Resident BE NL employer 100% working in NL**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 100% working in BE**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 2.282	€ 0	€ 0	€ 2.282
Tax BE	€ 332	€ 7.012	€ 7.012	€ 0
Premiums*	€ 6.661	€ 5.045	€ 5.045	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 27.225	€ 24.443	€ 24.443	€ 27.557
Employer premiums	€ 6.426	€ 8.522	€ 8.522	€ 6.426
Labour cost*	€ 42.926	€ 45.022	€ 45.022	€ 42.926
	22	23 = 1	24	
SS in state of residence	**Resident BE NL employer 60% working in NL, 40% in BE**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 60% working in BE, 40% in NL**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 77	€ 0	€ 0	€ 2.282
Tax BE	€ 3.070	€ 7.012	€ 3.473	€ 0
Premiums*	€ 4.747	€ 5.045	€ 6.661	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 1.190	€ 0
Net	€ 28.606	€ 24.443	€ 27.557	€ 27.557
Employer premiums**	€ 8.522	€ 8.522	€ 6.426	€ 6.426
Labour cost	€ 45.022	€ 45.022	€ 42.926	€ 42.926

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

SS in employment state	Resident DE NL employer 100% working in NL	Resident DE DE employer 100% working in DE	Resident NL DE employer 100% working in DE	Resident NL NL employer 100% working in NL
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 2.282	€ 0	€ 0	€ 2.282
Tax DE	€ 0	€ 4.842	€ 4.841	€ 0
Premiums*	€ 6.661	€ 7.382	€ 7.382	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 27.557	€ 24.276	€ 24.277	€ 27.557
Employer premiums	€ 6.426	€ 8.021	€ 8.021	€ 6.426
Labour cost**	€ 42.926	€ 44.521	€ 44.521	€ 42.926

SS in state of residence	Resident DE NL employer 60% working in NL, 40% in DE	Resident DE DE employer 100% working in DE	Resident NL DE employer 60% working in DE, 40% in NL	Resident NL NL employer 100% working in NL
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 755	€ 0	€ 0	€ 2.282
Tax DE	€ 1.963	€ 4.842	€ 1.997	€ 0
Premiums*	€ 7.382	€ 7.382	€ 6.661	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 26.400	€ 24.276	€ 27.842	€ 27.557
Employer premiums**	€ 8.021	€ 8.021	€ 6.426	€ 6.426
Labour cost	€ 44.521	€ 44.521	€ 42.926	€ 42.926

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1

* For Germany: statutory pension, unemployment, health and nursing care (incl. surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

	1		2	3 = 1
SS in employment state	**Resident DE BE employer 100% working in BE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 100% working in DE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax BE	€ 7.012	€ 0	€ 240	€ 7.012
Tax DE***	€ 0	€ 4.842	€ 4.454	€ 0
Premiums*	€ 5.045	€ 7.382	€ 7.382	€ 5.045
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 24.443	€ 24.276	€ 24.424	€ 24.443
Employer premiums**	€ 8.522	€ 8.021	€ 8.021	€ 8.522
Labour cost	€ 45.022	€ 44.521	€ 44.521	€ 45.022

	4		5	6 = 1
SS in state of residence	**Resident DE BE employer 60% working in BE, 40% in DE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 60% working in DE, 40% in BE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax BE	€ 3.357	€ 0	€ 2.812	€ 7.012
Tax DE***	€ 1.963	€ 4.842	€ 1.837	€ 0
Premiums*	€ 7.382	€ 7.382	€ 4.747	€ 5.045
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 23.798	€ 24.276	€ 27.104	€ 24.443
Employer premiums**	€ 8.021	€ 8.021	€ 8.522	€ 8.522
Labour cost	€ 44.521	€ 44.521	€ 45.022	€ 45.022

* For Germany: statutory pension, unemployment, health and nursing care (incl. surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

*** For BE resident: 8% deduction on income tax considered according to Sec. 11 para 2 of the Final Protocol to the DTT Germany - Belgium

2021 pro-forma calculations / entire year / single / no deductions / income tax (IB) calculations / municipal taxes 7% / including tax credits

	13	14 = 7	15 = 7	
SS in employment state	**Resident BE NL employer 100% working in NL**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 100% working in BE**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 9.912	€ 0	€ 0	€ 9.912
Tax BE	€ 630	€ 15.038	€ 15.038	€ 0
Premiums*	€ 8.358	€ 7.730	€ 7.730	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 36.600	€ 32.732	€ 32.732	€ 37.230
Employer premiums**	€ 9.771	€ 12.958	€ 12.958	€ 9.771
Labour cost	€ 65.271	€ 68.458	€ 68.458	€ 65.271
	16	17 = 7	18	
SS in state of residence	**Resident BE NL employer 60% working in NL, 40% in BE**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 60% working in BE, 40% in NL**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 1.414	€ 0	€ 3.385	€ 9.912
Tax BE	€ 6.436	€ 15.038	€ 7.827	€ 0
Premiums*	€ 7.217	€ 7.730	€ 8.358	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 1.301	€ 0
Net	€ 40.433	€ 32.732	€ 37.230	€ 37.230
Employer premiums**	€ 12.958	€ 12.958	€ 9.771	€ 9.771
Labour cost	€ 68.458	€ 68.458	€ 65.271	€ 65.271

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

SS in employment state	Resident DE NL employer 100% working in NL	Resident DE DE employer 100% working in DE	Resident NL DE employer 100% working in DE	Resident NL NL employer 100% working in NL
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 9.912	€ 0	€ 0	€ 9.912
Tax DE	€ 0	€ 10.077	€ 10.074	€ 0
Premiums*	€ 8.358	€ 11.225	€ 11.225	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 37.230	€ 34.198	€ 34.201	€ 37.230
Employer premiums	€ 9.771	€ 12.196	€ 12.196	€ 9.771
Labour costs**	€ 65.271	€ 67.696	€ 67.696	€ 65.271

SS in state of residence	Resident DE NL employer 60% working in NL, 40% in DE	Resident DE DE employer 100% working in DE	Resident NL DE employer 60% working in DE, 40% in NL	Resident NL NL employer 100% working in NL
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 1.859	€ 0	€ 3.385	€ 9.912
Tax DE	€ 4.191	€ 10.077	€ 5.201	€ 0
Premiums*	€ 11.225	€ 11.225	€ 8.358	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 38.225	€ 34.198	€ 38.556	€ 37.230
Employer premiums**	€ 12.196	€ 12.196	€ 9.771	€ 9.771
Labour cost	€ 67.696	€ 67.696	€ 65.271	€ 65.271

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

* For Germany: statutory pension, unemployment, health and nursing care (incl. surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

	7		8	9 = 7
SS in employment state	**Resident DE BE employer 100% working in BE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 100% working in DE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax BE	€ 15.038	€ 0	€ 1.235	€ 15.038
Tax DE	€ 0	€ 10.077	€ 9.268	€ 0
Premiums	€ 7.730	€ 11.225	€ 11.225	€ 7.730
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 32.732	€ 34.198	€ 33.772	€ 32.732
Employer premiums	€ 12.958	€ 12.196	€ 12.196	€ 12.958
Labour cost	€ 68.458	€ 67.696	€ 67.696	€ 68.458
	10		11	12 = 7
SS in state of residence	**Resident DE BE employer 60% working in BE, 40% in DE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 60% working in DE, 40% in BE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax BE	€ 10.213	€ 0	€ 6.605	€ 15.038
Tax DE	€ 4.191	€ 10.077	€ 4.785	€ 0
Premiums	€ 11.225	€ 11.225	€ 7.217	€ 7.730
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 29.871	€ 34.198	€ 36.892	€ 32.732
Employer premiums	€ 12.196	€ 12.196	€ 12.958	€ 12.958
Labour cost	€ 67.696	€ 67.696	€ 68.458	€ 68.458

* For Germany: statutory pension, unemployment, health and nursing care (incl. surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

*** For BE resident: 8% deduction on income tax considered according to Sec. 11 para 2 of the Final Protocol to the DTT Germany - Belgium

Annex 2: Overview calculations couples (partner no income), two children, NL-BE, NL-DE

2021 pro-forma calculations / entire year / married / spouse without own income in country of residence / 2 children of 8 en 10 years old) /no deductions / income tax (IB) calculations / municipal taxes 7% / including tax credits

	1	2	3 = 2	
SS in employment state	**Resident BE NL employer 100% working in NL**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 100% working in BE**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 2.282	€ 0	€ 0	€ 2.282
Tax BE	€ 0	€ 1.700	€ 1.700	€ 0
Premiums*	€ 6.661	€ 5.045	€ 5.045	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 27.557	€ 29.756	€ 29.756	€ 27.557
Employer premiums	€ 6.426	€ 8.522	€ 8.522	€ 6.426
Labour cost*	€ 42.926	€ 45.022	€ 45.022	€ 42.926
	4	5 = 2	6	
SS in state of residence	**Resident BE NL employer 60% working in NL, 40% in BE**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 60% working in BE, 40% in NL**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 77	€ 0	€ 0	€ 2.282
Tax BE	€ 734	€ 1.700	€ 3.473	€ 0
Premiums	€ 4.747	€ 5.045	€ 6.661	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 1.191	€ 0
Net	€ 30.943	€ 29.756	€ 27.557	€ 27.557
Employer premiums	€ 8.522	€ 8.522	€ 6.426	€ 6.426
Labour cost	€ 45.022	€ 45.022	€ 42.926	€ 42.926

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

SS in employment state	Resident DE NL employer 100% working in NL	Resident DE DE employer 100% working in DE	Resident NL DE employer 100% working in DE	Resident NL NL employer 100% working in NL
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 2.282	€ 0	€ 0	€ 2.282
Tax DE	€ 0	€ 1.728	€ 1.728	€ 0
Premiums*	€ 6.661	€ 7.291	€ 7.291	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 27.557	€ 27.481	€ 27.481	€ 27.557
Employer premiums	€ 6.426	€ 8.021	€ 8.021	€ 6.426
Labour cost**	€ 42.926	€ 44.521	€ 44.521	€ 42.926

SS in state of residence	Resident DE NL employer 60% working in NL, 40% in DE	Resident DE DE employer 100% working in DE	Resident NL DE employer 60% working in DE, 40% in NL	Resident NL NL employer 100% working in NL
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 755	€ 0	€ 0	€ 2.282
Tax DE	€ 888	€ 1.728	€ 1.567	€ 0
Premiums*	€ 7.291	€ 7.291	€ 6.661	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 27.566	€ 27.481	€ 28.272	€ 27.557
Employer premiums	€ 8.021	€ 8.021	€ 6.426	€ 6.426
Labour cost**	€ 44.521	€ 44.521	€ 42.926	€ 42.926

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

* For Germany: statutory pension, unemployment, health and nursing care (excluding surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

	13 = 2		14	15 = 2
SS in employment state	**Resident DE BE employer 100% working in BE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 100% working in DE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax BE	€ 1.700	€ 0	€ 0	€ 1.700
Tax DE	€ 0	€ 1.728	€ 1.590	€ 0
Premiums	€ 5.045	€ 7.291	€ 7.291	€ 5.045
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 29.756	€ 27.481	€ 27.619	€ 29.756
Employer premiums	€ 8.522	€ 8.021	€ 8.021	€ 8.522
Labour cost	€ 45.022	€ 44.521	€ 44.521	€ 45.022

	16		17	18 = 2
SS in state of residence	**Resident DE BE employer 60% working in BE, 40% in DE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 60% working in DE, 40% in BE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax BE	€ 3.357	€ 0	€ 394	€ 1.700
Tax DE	€ 888	€ 1.728	€ 1.442	€ 0
Premiums	€ 7.291	€ 7.291	€ 4.747	€ 5.045
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 24.964	€ 27.481	€ 29.918	€ 29.756
Employer premiums	€ 8.021	€ 8.021	€ 8.522	€ 8.522
Labour cost	€ 44.521	€ 44.521	€ 45.022	€ 45.022

* For Germany: statutory pension, unemployment, health and nursing care (excluding surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

*** For BE resident: 8% deduction on income tax considered according to Sec. 11 para 2 of the Final Protocol to the DTT Germany - Belgium

2021 pro-forma calculations / entire year / married / spouse without own income in country of residence / 2 children of 8 en 10 years old) /no deductions / income tax (IB) calculations / municipal taxes 7% / including tax credits

	7	8	9 = 8	
SS in employment state	**Resident BE NL employer 100% working in NL**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 100% working in BE**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 9.912	€ 0	€ 0	€ 9.912
Tax BE	€ 255	€ 8.815	€ 8.815	€ 0
Premiums*	€ 8.358	€ 7.730	€ 7.730	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 36.975	€ 38.955	€ 38.955	€ 37.230
Employer premiums	€ 9.771	€ 12.958	€ 12.958	€ 9.771
Labour cost**	€ 65.271	€ 68.458	€ 68.458	€ 65.271

	10	11 = 8	12	
SS in state of residence	**Resident BE NL employer 60% working in NL, 40% in BE**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 60% working in BE, 40% in NL**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 1.414	€ 0	€ 3.385	€ 9.912
Tax BE	€ 3.666	€ 8.815	€ 7.827	€ 0
Premiums*	€ 7.217	€ 7.730	€ 8.358	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 1.301	€ 0
Net	€ 43.203	€ 38.955	€ 37.230	€ 37.230
Employer premiums	€ 12.958	€ 12.958	€ 9.771	€ 9.771
Labour cost**	€ 68.458	€ 68.458	€ 65.271	€ 65.271

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

SS in employment state	Resident DE NL employer 100% working in NL	Resident DE DE employer 100% working in DE	Resident NL DE employer 100% working in DE	Resident NL NL employer 100% working in NL
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 9.912	€ 0	€ 0	€ 9.912
Tax DE	€ 0	€ 5.868	€ 5.868	€ 0
Premiums*	€ 8.358	€ 11.086	€ 11.086	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 37.230	€ 38.546	€ 38.546	€ 37.230
Employer premiums	€ 9.771	€ 12.196	€ 12.196	€ 9.771
Labour cost**	€ 65.271	€ 67.696	€ 67.696	€ 65.271

SS in state of residence	Resident DE NL employer 60% working in NL, 40% in DE	Resident DE DE employer 100% working in DE	Resident NL DE employer 60% working in DE, 40% in NL	Resident NL NL employer 100% working in NL
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 1.859	€ 0	€ 3.385	€ 9.912
Tax DE	€ 2.484	€ 5.868	€ 5.201	€ 0
Premiums*	€ 11.086	€ 11.086	€ 8.358	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 40.071	€ 38.546	€ 38.556	€ 37.230
Employer premiums	€ 12.196	€ 12.196	€ 9.771	€ 9.771
Labour cost**	€ 67.696	€ 67.696	€ 65.271	€ 65.271

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

* For Germany: statutory pension, unemployment, health and nursing care (excluding surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

	19 = 8		20	21 = 8
SS in employment state	**Resident DE BE employer 100% working in BE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 100% working in DE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax BE	€ 8.815	€ 0	€ 803	€ 8.815
Tax DE	€ 0	€ 5.868	€ 5.399	€ 0
Premiums	€ 7.730	€ 11.086	€ 11.086	€ 7.730
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 38.955	€ 38.546	€ 38.213	€ 38.955
Employer premiums	€ 12.958	€ 12.196	€ 12.196	€ 12.958
Labour cost	€ 68.458	€ 67.696	€ 67.696	€ 68.458

	22		23	24 = 8
SS in state of residence	**Resident DE BE employer 60% working in BE, 40% in DE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 60% working in DE, 40% in BE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax BE	€ 10.213	€ 0	€ 3.872	€ 8.815
Tax DE	€ 2.484	€ 5.868	€ 4.785	€ 0
Premiums	€ 11.086	€ 11.086	€ 7.217	€ 7.730
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 31.717	€ 38.546	€ 39.626	€ 38.955
Employer premiums	€ 12.196	€ 12.196	€ 12.958	€ 12.958
Labour cost	€ 67.696	€ 67.696	€ 68.458	€ 68.458

* For Germany: statutory pension, unemployment, health and nursing care (excluding surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

*** For BE resident: 8% deduction on income tax considered according to Sec. 11 para 2 of the Final Protocol to the DTT Germany - Belgium

Annex 3: Overview calculations couples (partner income), two children, NL-BE, NL-DE

2021 pro-forma calculations / entire year / married / spouse with own gross annual income of € 15.000 in country of residence / 2 children of 8 and 10 years old) / no deductions / income tax (IB) calculations / municipal taxes 7% / including tax credits

	1	2	3 = 2	
SS in employment state	**Resident BE NL employer 100% working in NL**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 100% working in BE**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 2.282	€ 0	€ 0	€ 2.282
Tax BE	€ 200	€ 5.007	€ 5.007	€ 0
Premiums*	€ 6.661	€ 5.045	€ 5.045	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 27.357	€ 26.448	€ 26.448	€ 27.557
Employer premiums	€ 6.426	€ 8.522	€ 8.522	€ 6.426
Labour cost**	€ 42.926	€ 45.022	€ 45.022	€ 42.926
	4	5 = 2	6	
SS in state of residence	**Resident BE NL employer 60% working in NL, 40% in BE**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 60% working in BE, 40% in NL**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 77	€ 0	€ 0	€ 2.282
Tax BE	€ 2.188	€ 5.007	€ 3.473	€ 0
Premiums	€ 4.747	€ 5.045	€ 6.661	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 1.191	€ 0
Net	€ 29.489	€ 26.448	€ 27.557	€ 27.557
Employer premiums	€ 8.522	€ 8.522	€ 6.426	€ 6.426
Labour cost**	€ 45.022	€ 45.022	€ 42.926	€ 42.926

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** Excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

SS in employment state	Resident DE NL employer 100% working in NL	Resident DE DE employer 100% working in DE	Resident NL DE employer 100% working in DE	Resident NL NL employer 100% working in NL
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 2.282	€ 0	€ 0	€ 2.282
Tax BE	€ 0	€ 3.340	€ 3.542	€ 0
Premiums*	€ 6.661	€ 7.291	€ 7.291	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 27.557	€ 25.869	€ 25.667	€ 27.557
Employer premiums	€ 6.426	€ 8.021	€ 8.021	€ 6.426
Labour cost**	€ 42.926	€ 44.521	€ 44.521	€ 42.926

SS in state of residence	Resident DE NL employer 60% working in NL, 40% in DE	Resident DE DE employer 100% working in DE	Resident NL DE employer 60% working in DE, 40% in NL	Resident NL NL employer 100% working in NL
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax NL	€ 755	€ 0	€ 0	€ 2.282
Tax BE	€ 1.971	€ 3.340	€ 1.997	€ 0
Premiums*	€ 7.291	€ 7.291	€ 6.661	€ 6.661
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 26.483	€ 25.869	€ 27.842	€ 27.557
Employer premiums	€ 8.021	€ 8.021	€ 6.426	€ 6.426
Labour cost**	€ 44.521	€ 44.521	€ 42.926	€ 42.926

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

* For Germany: statutory pension, unemployment, health and nursing care (including surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

	7 = 2		8	9 = 2
SS in employment state	**Resident DE BE employer 100% working in BE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 100% working in DE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax BE	€ 5.007	€ 0	€ 109	€ 5.007
Tax DE	€ 0	€ 3.340	€ 3.259	€ 0
Premiums	€ 5.045	€ 7.291	€ 7.291	€ 5.045
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 26.448	€ 25.869	€ 25.841	€ 26.448
Employer premiums	€ 8.522	€ 8.021	€ 8.021	€ 8.522
Labour cost	€ 45.022	€ 44.521	€ 44.521	€ 45.022

	10		11	12 = 2
SS in state of residence	**Resident DE BE employer 60% working in BE, 40% in DE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 60% working in DE, 40% in BE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 36.500	€ 36.500	€ 36.500	€ 36.500
Tax BE	€ 3.357	€ 0	€ 1.881	€ 5.007
Tax DE	€ 1.971	€ 3.340	€ 1.997	€ 0
Premiums	€ 7.291	€ 7.291	€ 4.747	€ 5.045
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 23.881	€ 25.869	€ 27.876	€ 26.448
Employer premiums	€ 8.021	€ 8.021	€ 8.522	€ 8.522
Labour cost	€ 44.521	€ 44.521	€ 45.022	€ 45.022

* For Germany: statutory pension, unemployment, health and nursing care (including surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

*** For BE resident: 8% deduction on income tax considered according to Sec. 11 para 2 of the Final Protocol to the DTT Germany - Belgium

2021 pro-forma calculations / entire year / married / spouse with own gross annual income of € 15.000 in country of residence / 2 children of 8 and 10 years old) / no deductions / income tax (IB) calculations / municipal taxes 7% / including tax credits

	13	14	15 = 14	
SS in employment state	**Resident BE NL employer 100% working in NL**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 100% working in BE**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 9.912	€ 0	€ 0	€ 9.912
Tax BE	€ 499	€ 13.033	€ 13.033	€ 0
Premiums*	€ 8.358	€ 7.730	€ 7.730	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 36.731	€ 34.737	€ 34.737	€ 37.230
Employer premiums	€ 9.771	€ 12.958	€ 12.958	€ 9.771
Labour cost**	€ 65.271	€ 68.458	€ 68.458	€ 65.271

	16	17 = 14	18	
SS in state of residence	**Resident BE NL employer 60% working in NL, 40% in BE**	**Resident BE BE employer 100% working in BE**	**Resident NL BE employer 60% working in BE, 40% in NL**	**Resident NL NL employer 100% working in NL**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 1.414	€ 0	€ 3.385	€ 9.912
Tax BE	€ 5.533	€ 13.033	€ 7.827	€ 0
Premiums	€ 7.217	€ 7.730	€ 8.358	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 1.301	€ 0
Net	€ 41.337	€ 34.737	€ 37.230	€ 37.230
Employer premiums	€ 12.958	€ 12.958	€ 9.771	€ 9.771
Labour cost**	€ 68.458	€ 68.458	€ 65.271	€ 65.271

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** Excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

SS in employment state	Resident DE NL employer 100% working in NL	Resident DE DE employer 100% working in DE	Resident NL DE employer 100% working in DE	Resident NL NL employer 100% working in NL
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 9.912	€ 0	€ 0	€ 9.912
Tax BE	€ 0	€ 7.181	€ 7.535	€ 0
Premiums*	€ 8.358	€ 11.086	€ 11.086	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 37.230	€ 37.233	€ 36.879	€ 37.230
Employer premiums	€ 9.771	€ 12.196	€ 12.196	€ 9.771
Labour cost**	€ 65.271	€ 67.696	€ 67.696	€ 65.271

SS in state of residence	Resident DE NL employer 60% working in NL, 40% in DE	Resident DE DE employer 100% working in DE	Resident NL DE employer 60% working in DE, 40% in NL	Resident NL NL employer 100% working in NL
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax NL	€ 1.859	€ 0	€ 3.385	€ 9.912
Tax BE	€ 4.208	€ 7.181	€ 5.201	€ 0
Premiums*	€ 11.086	€ 11.086	€ 8.358	€ 8.358
Reimbursement via compensation scheme	€ 0	€ 0	€ 0	€ 0
Net	€ 38.347	€ 37.233	€ 38.556	€ 37.230
Employer premiums	€ 12.196	€ 12.196	€ 9.771	€ 9.771
Labour cost**	€ 67.696	€ 67.696	€ 65.271	€ 65.271

*If SS in NL: including nominal health insurance premium and excluding care allowance, if applicable

** Excluding holiday allowance, lower WW premium rate if SS in NL (0.34% as of 1 augustus 2021)

* For Germany: statutory pension, unemployment, health and nursing care (including surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

	19 = 14		20	21 = 14
SS in employment state	**Resident DE BE employer 100% working in BE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 100% working in DE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax BE	€ 13.033	€ 0	€ 1.104	€ 13.033
Tax DE	€ 0	€ 7.181	€ 6.932	€ 0
Premiums	€ 7.730	€ 11.086	€ 11.086	€ 7.730
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 34.737	€ 37.233	€ 36.378	€ 34.737
Employer premiums	€ 12.958	€ 12.196	€ 12.196	€ 12.958
Labour cost	€ 68.458	€ 67.696	€ 67.696	€ 68.458

	22		23	24 = 14
SS in state of residence	**Resident DE BE employer 60% working in BE, 40% in DE**	**Resident DE DE employer 100% working in DE**	**Resident BE DE employer 60% working in DE, 40% in BE**	**Resident BE BE employer 100% working in BE**
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Tax BE	€ 10.213	€ 0	€ 5.725	€ 13.033
Tax DE	€ 4.208	€ 7.181	€ 4.785	€ 0
Premiums	€ 11.086	€ 11.086	€ 7.217	€ 7.730
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 29.993	€ 37.233	€ 37.773	€ 34.737
Employer premiums	€ 12.196	€ 12.196	€ 12.958	€ 12.958
Labour cost	€ 67.696	€ 67.696	€ 68.458	€ 68.458

* For Germany: statutory pension, unemployment, health and nursing care (including surcharge of 0.25% for employees without children; borne by employee only)

** German social security: statutory pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

*** For BE resident: 8% deduction on income tax considered according to Sec. 11 para 2 of the Final Protocol to the DTT Germany - Belgium

Annex 4: general overview of BE, DE and NL taxes and social security premiums

This appendix serves as a brief supplement to the figures presented in the preceding tables. It provides a brief overview of the applicable percentages to tax rates and social security premiums. These percentages underlie the calculations.

Belgium

In a nutshell, the following tax rates and social security premiums apply in Belgium:

Year 2021 (fiscal year 2022) – progressive tax rates

From	To	Tax rate
-	13,540	25.00%
13,540	23,900	40.00%
23,900	41,360	49.50%
41,360		50%
All tax amounts are excluding applicable municipal taxes, which may be up to 9% (for 2021). The municipal tax is calculated based on the amount of income tax due.		

There is a tax-free amount, which applies to everyone under the income tax scheme. For 2021, this tax-free amount was set at € 9,050, meaning that no tax is levied below this income level. This amount can increase depending on one's personal situation, such as having children. For parents with one child, it increases by € 1,650; with two children by € 4,240; with three children by € 9,500; with four children by € 16,360; and with more than four children by € 5,860 per child.

Social security premiums are generally mandatory for persons working in Belgium. For 2021, the rate of an employee's basic social security premium is 13.07%. This rate applies to the monthly gross remuneration, with no ceiling. The employer's social security premiums are levied at a basic rate of 19.88% of the gross monthly remuneration, with no ceiling. On top of this base rate, a number of specific employer premiums are due, some of which vary based on certain parameters and may be industry or sector specific. Certain reductions are possible, depending on various eligibility criteria. This results in an average real social security premium rate of about 25%. These rates apply to employees in the private sector.

Germany

In Germany, a distinction is made between singles, married couples, and partners (living together). Germany uses the so called splitting system for married couples and certain partnerships. The following income tax rates apply:

Singles

Taxable income[80]			
From	**To**	**Tax rate**	**Tax payable**
-	€ 9,744	0.00%	€ 0
€ 9,745	€ 14,753	14.00%-23.97%	€ 0 - € 951
€ 14,754	€ 57,918	23.97%-42%	€ 951 - € 15,981
€ 57,919	€ 274,612	42%	€ 15,981 - € 106,200
€ 274,613	--	45%	€ 106,200 - -----
In addition, a so-called solidarity surcharge of 5.5% applies to the tax payable after tax credits have been deducted. As of January 1, 2021, this surcharge has been reduced by introducing an exemption threshold of € 16,956 (€ 33,912 for married couples and partners).			

Married couples and partners (living together)

Taxable income[81]			
From	**To**	**Tax rate**	**Tax payable**
-	€ 19,488	0.00%	€ 0
€ 19,489	€ 29,506	14.00%-23.97%	€ 0 - € 1,902
€ 29,507	€ 115,836	23.97%-42%	€ 1,902 - € 30,378
€ 115,837	€ 549,224	42%	€ 30,378 - € 212,400
€ 549,225	--	45%	€ 212,400 - -----

Note that the *Kirchensteuer* (church tax) for German residents was left out of the calculations, and only standard deductions have been taken into account. Depending on the personal situation of the person(s) concerned, the amount of tax payable can vary.

For Belgian residents, an 8% deduction has been taken into account, in accordance with the Protocol to the Belgium-Germany Treaty. If there were any children involved, it was checked whether the so-called *Kinderfreibetrag* would exceed *child allowance*. This proved not to be the case in any situation.

Social security in Germany has a number of branches: pension insurance (*Rentenversicherung);* unemployment insurance (*Arbeitslosenversicherung*); health insurance (*Krankenversicherung*); and health insurance for disability and old age (*Pflegeversicherung*). In general, employers and employees pay the premiums equally. In addition, there is the *Unfallversicherung,* which is paid by the employers. The height of the premium depends on a risk classification. This type of insurance has not been included in the calculations.

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[80] See Document - Tax Research Platform - IBFD (unimaas.nl), retrieved 22 October 2021.

[81] See Document - Tax Research Platform - IBFD (unimaas.nl), retrieved 22 October 2021.

	Rate	Maximum income for premium levy	Maximum premium
Rentenverischerung			
Employer	9.3	€ 85,200	€ 7,923
Employee	9.3	€ 85,200	€ 7,923
Arbeitslosenversicherung			
Employer	1.2	€ 85,200	€ 1,022
Employer	1.2	€ 85,200	€ 1,022
Krankenversicherung			
Employer	7.95	€ 58,050	€ 4,619
Employee	7.95	€ 58,050	€ 4,619
Plegeversicherung			
Employer	1.525[82]	€ 58,200	€ 888
Employee	1.525[83]	€ 58,200	€ 888/€ 1,030

In addition, the employer pays some premiums: one for the cost of maternity leave (U2, 0.5%); another premium for the cost of maternity leave (U1, 3%), only payable if there are less than 30 full-time employees; and, finally, a contribution to the insolvency fund (0.12%). The maximum income on which the premium is calculated is always € 85,200. All of these premiums have been included in the calculations.

[82] In Saxony, the percentage is 1.525. Document - Germany - Corporate Taxation - 4. Taxes on Payroll - Tax Research Platform - IBFD (unimaas.co.uk), retrieved 22 October 2021.

[83] In Saxony, the rate is 2.025. For childless workers, this rate is increased by 0.25 percentage points. Document - Germany - Individual Taxation - 3. Social Security Contributions - Tax Research Platform - IBFD (unimaas.co.uk), retrieved 22 October 2021.

Netherlands

In the Netherlands, the collection of social security premiums is linked to one tax bracket. For 2021, the situation is as follows:

Tax bracket	From	To	Rate	NI rate*	Total rate	cumulative load	cumulative NI
1a	-	€ 35,129	9.45%	27.65%	37.10%	€ 3,320	€ 9,713
1b	€ 35,129	€ 68,507	37.10%	0.00%	37.10%	€ 15,703	€ 9,713
2	€ 68,507		49.50%	0.00%	49.50%		
** = National Insurance premiums are levied together with taxes.*							

There is a tax credit, which consists of a tax part and a national social insurance part. The subdivision is based on the ratio in the first tax bracket: 9.7/36.35 has been allocated to the tax part and 27.65/37.35 to the national social insurance part. The national social insurance part only applies to those subject to social security in the Netherlands. For the tax part, this depends on tax residence.

General tax credit (tax and national insurance premiums)					
Base amount	€ 2,837				
Rate of reduction	5.977%	for salaries from	€ 21,043	to	€ 68,507
Payroll tax credit					
Base amount	€ 4,205				
Rate of increase	4.581%	for salaries below	€ 10,108		
	28.771%	for salaries from	€ 10,108	to	€ 21,835
	2.663%	for salaries from	€ 21,835	to	€ 35,652
Rate of reduction	6.0%	for salaries from	€ 35,652	to	€ 105,735

In the area of social security, there are further premiums for health insurance (under the *Zorgverzekeringswet*), employee insurance schemes (WAO and WIA) and unemployment insurance (WW).

	Rate	Maximum income for premium levy	Maximum premium
Zorgverzekeringswet			
Employer	7.00	€ 58,311	€ 4,082
Employee			€ 1,705
WAO/WIA			
Employer	7.03	€ 58,311	€ 4,099
Employee	0.50	€ 58,311	€ 292
Terug naar Werk reintegration fund (average)	1.36	€ 58,311	€ 793
WW			
Employer (low)	2.70 (0.34 per 1/8/21)	€ 58,311	€ 1,574
Employer (high)	7.70 (5.34 per 1/8/21)	€ 58,311	€ 4,490