

# PAYROLL ALERT

## TELEWORK REGIME FROM 1 JULY 2023

The objective of this "Payroll alert" is to summarise the tax and social security rules applicable from 1 July 2023.

### A. Social security rules

In order to best respond to the changing legal framework for teleworking, the member states of the European Union have drawn up a new framework agreement in the field of social security. This framework agreement follows the expiry of the transitional period that had been in place until June 30, 2023. The agreement facilitates cross-border teleworking by raising the thresholds enabling the teleworker to remain subject to the social security legislation of the Member State where the employer's head office is located.

#### Conditions:

- ▶ The worker's country of residence and the country in which the employer is based are signatories to the framework agreement,
- ▶ Telework is carried out exclusively in the country of residence,
- ▶ Telework in the country of residence must represent between 25% and less than 50% of the worker's actual working time,
- ▶ Telework is carried out via the employer's IT infrastructure, in order to guarantee the proper execution of the tasks entrusted by the employer.

#### Entry into force:

The framework agreement has entered into force on July 1, 2023. Between July 1, 2023 and June 30, 2024 inclusive, employers will be able to make a declaration that can be retroactive for up to 12 months, but no earlier than July 1, 2023, or the date of entry into force of the framework agreement for countries ratifying it after July 1, 2023. Retroactivity will only apply if the employee was already affiliated to the Luxembourg social security system throughout the period in question. The agreement has been concluded for an initial period of 5 years, renewable by tacit agreement.

#### Signatories:

Among the countries bordering Luxembourg, Belgium, Germany and France have signed the framework agreement.



Please note that the framework agreement only covers social security. Taxation provisions are governed by specific bilateral agreements (see below).

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### Different situations:

Working time in country of residence	< 25% of working time	> 25% or = and < 50%	> 50% of working time
Regulations / agreement	Application of the rule according to Regulation (EC) 883/2004 and 987/2009	Framework Agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework	Application of the rule according to Regulation (EC) 883/2004 and 987/2009
Applicant	Employee + employer	Online CCSS declaration by the employer	Employee + employer
Procedure	Analysis by the social security organization in the country of residence	Case-by-case examination by the CCSS	Analysis by the social security organization in the country of residence
	-	Failure to apply the framework agreement: application of regulations (EC) 883/2004 and 987/2009	-

The framework agreement does not apply to employees who habitually pursue an activity other than teleworking in their country of residence. Furthermore, the framework agreement does not cover secondments or cases of pluriactivity (working for several employers in several member states).

### Framework agreement procedure:

- ▶ A TOKEN (unique identification code) is automatically assigned by the CCSS to each employer likely to be involved in teleworking. If necessary, the employer can request a TOKEN from the CCSS
- ▶ On the platform dedicated to regular teleworking, the employer provides information concerning the employer, the insured and the insured's activity with the employer <https://teletravail.ccss.lu/>
- ▶ For people eligible for the provisions of the teleworking framework agreement, the CCSS will apply the procedure set out in the framework agreement
- ▶ For persons submitting this form who are not covered by the telework framework agreement, the CCSS will automatically forward the file to the competent authority of the member state of residence, so that it can determine the applicable legislation. For faster processing of the file by the competent authority of the member state of residence, it is possible to contact the latter directly to provide it with all the information relevant to its decision
- ▶ The approval is given by the CCSS for a maximum of 3 years, renewable on request.

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### The standard procedure to be adopted in the event of non-application of the framework agreement:

According to the European regulation (EC) No 987/2009, it is the employee's responsibility to contact the competent authority in his/her country of residence in order to obtain a ruling on the applicable legislation. Consequently, in order to guarantee the respect of the procedure (article 16 of the regulation 987/2009), we recommend to our clients to make sure that the cross-border employees wishing to engage in telework have completed the necessary formalities with the competent authority of their country of residence.

- ▶ The employee fills out the appropriate form provided by the competent social security organisation in his or her state of residence <https://ccss.public.lu/fr/employeurs/secteur-prive/travail-plusieurs-pays/organ-etrangers.html>
- ▶ The employer countersigns this form before sending it
- ▶ The employer formalises the telework via an amendment or a policy signed between the employee and the employer
  - 1<sup>st</sup> case : If the social security threshold is not reached → the competent social security organisation of the country of residence will confirm that the employee must be affiliated to social security in Luxembourg. The employer then must send a request for an A1 certificate to the CCSS.
  - 2<sup>nd</sup> case : If the social security threshold is exceeded → the employer must apply for an A1 certificate in the employee's country of residence.
- ▶ However, it is possible to submit the request via the platform dedicated to regular telework, the CCSS will transmit the application to the competent institution in the country of residence <https://teletravail.ccss.lu/>

### B. Overview of the existing tax agreements

	Belgium	Germany	France
Applicable tax convention	CDI 17/09/1970, article 15	CDI 23/04/2012, article 14	CDI 20/03/2018, article 14
OECD Compliance	Yes	Yes	Yes
Tolerance threshold	34 days	19 days*	34 days
Legal bases	Agreement 16/03/2015 Circ L.G. - Conv. D.I. no 59 31/03/2015 Amendment to the CDI dated 31 August 2021	Agreement 26/05/2011 Circ L.G. - Conv. D.I. no 56 26/03/2012	Protocol CDI point 3 Agreement 16/07/2020 Circ L.G. - Conv. D.I. no 61 21/10/2020 Amendment to the CDI dated 7 November 2022

\* The Grand Duchy of Luxembourg and the Federal Republic of Germany signed an amendment to the double taxation agreement on July 6, 2023. In particular, the amendment proposes to raise the tolerance threshold from 19 days to 34 days. The provisions will enter into force in 2024.



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### C. Rules applicable when the tax threshold is exceeded

	Belgium	Germany	France
Remuneration for days worked partly in Luxembourg and partly in France or in a third country	Pro-rata calculation of taxes according to the working time in each State (in practice, the working time is generally counted in full hours).	Pro-rata calculation of taxes according to the working time in each State (in practice, the working time is generally counted in full hours).	Pro-rata calculation of taxes according to the working time in each State (in practice, the working time is generally counted in full hours).
On-call premium (taxation)	State of residence according to Belgian tax authorities	Mutual agreement stipulates a pro-rata calculation based on the annual pro rata, but Finanzamt Trier seems to defend the State of residency	-
Remuneration of the actual work done in case of intervention during an on-call period	Prorating according to the actual working time in each state	State of effective performance of overtime	State of effective performance of overtime
Right to tax wages paid by the employer for a period of illness	Luxembourg	Luxembourg	Luxembourg
Wages paid as part of exemption from work during the notice period	Reference to OECD guidelines, thereby taxation in the State(s) where the employee would likely have worked during the notice period. Not taken into account for the calculation of the 34-days threshold (because there was no effective activity).	Pro-rata calculation of taxes on the basis of the calendar year preceding the year of termination of the employment contract. Not taken into account for the calculation of the 19-days* threshold (because there was no effective activity).	Reference to OECD guidelines, thereby taxation in the State(s) where the employee would likely have worked during the notice period. Not taken into account for the calculation of the 34-days threshold (because there was no effective activity).
Redundancy pay	Reference to OECD guidelines, thereby prorating taxes based on the last 12 months before the end of the employment contract.	Pro-rata calculation of taxes on the basis of the calendar year preceding the year of termination of the employment contract	Reference to OECD guidelines, thereby prorating taxes based on the last 12 months before the end of the employment contract.

\* See footnote above page 3

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### D. Calculation of the tolerance thresholds

	Belgium	Germany	France
Taking into account days worked partly in Luxembourg and partly in the country of residence or in a third country	Any fraction of a day worked partially outside Luxembourg, even for a short period, counts as a full day	Any fraction of a day worked partially outside Luxembourg counts as a full day	Any fraction of a day worked partially outside Luxembourg counts as a full day
Taking into account the days or fractions of days of training outside Luxembourg	Yes (considered as working days)	Yes (considered as working days)	Yes (considered as working days)
Taking into account days or fractions of days of on-call/permanence/on-call at the employee's home	Yes (considered as working days) No distinction between passive on-call duty and effective work during on-call duty according to Belgian tax authorities	-	-
Taking into account days or fractions of days of illness / maternity leave	No	No	No
Taking into account days or fractions of days of telework (work performed at home instead of the usual place of work)	Yes (considered as working days)	Yes (considered as working days)	Yes (considered as working days)
Consideration of telework time worked in addition to normal work time at the usual place of work	No, provided that the work time is marginal (e.g. reading emails before the work day)	-	-
Calculation of the threshold in case of part-time work	No pro-rata calculation according to the Luxembourg tax authorities, but the Belgian tax authorities have a different position	No pro-rata calculation	Prorated according to the time worked under the contract
Calculation of the threshold in case of part-year activity only	No pro-rata calculation according to the Luxembourg tax authorities, but the Belgian tax authorities have a different position	Mutual agreement does not provide for pro-rata calculation, but Finanzamt Trier has a different position	Prorated according to the length of occupancy

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