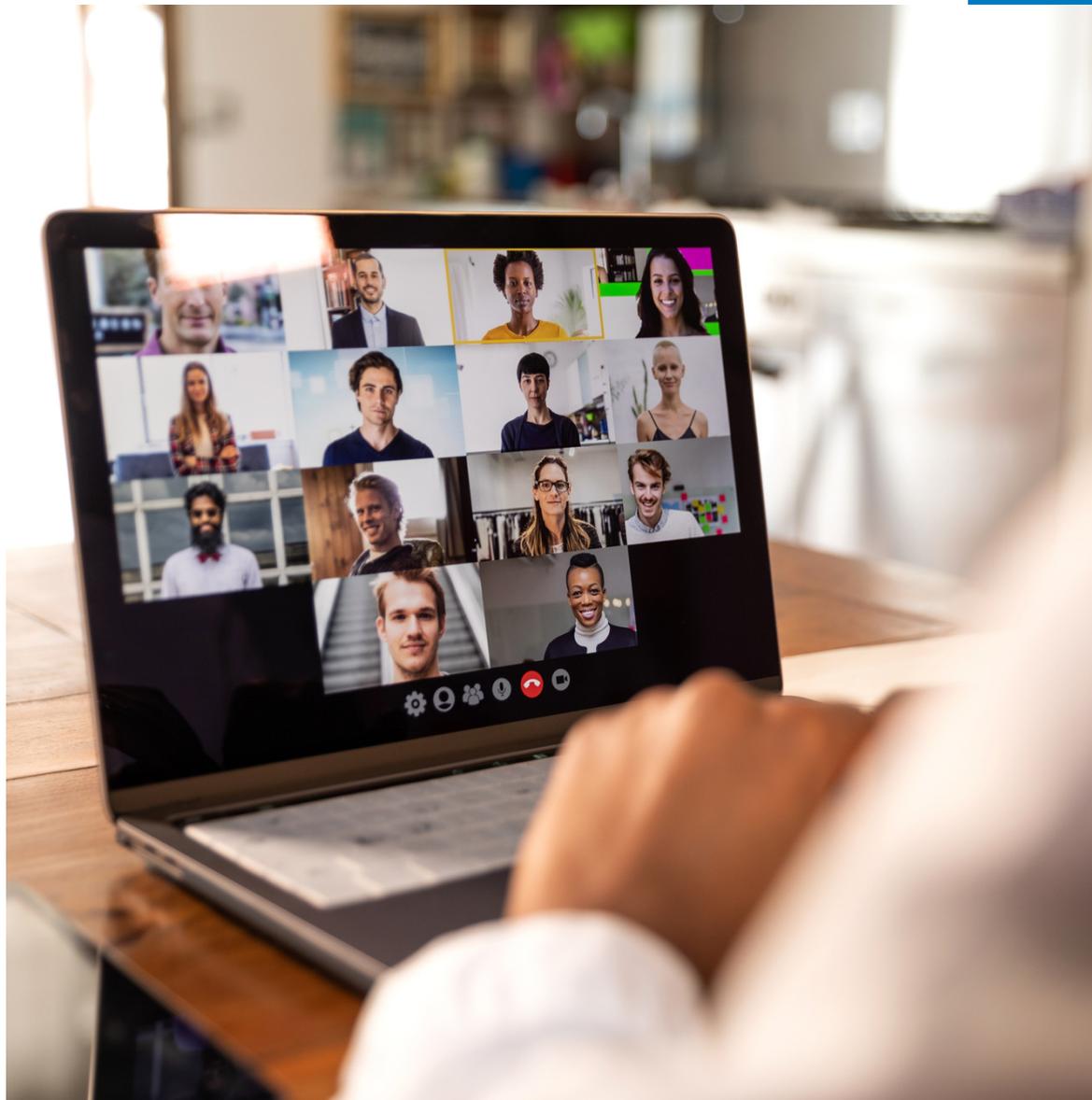


International Teleworking Observatory

One step further for International Teleworking...
developments relating to social security



September 2022



Asociación Española de
Movilidad Internacional

ONE STEP FURTHER FOR INTERNATIONAL TELEWORKING

Developments relating to social security



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It's good news for those of us immersed in the fascinating world of international mobility: the Administrative Commission for the Coordination of Social Security Systems of the European Commission ("the AC") has released guidance on international remote working or teleworking.

Although it does not have the unanimous approval of all the Member States, this represents a further step towards filling the regulatory vacuum surrounding the increasingly frequent scenario of international teleworking.

In its guidance the AC proposes a flexible interpretation of the EU social security regulations to also include international teleworking. Spain is one of the countries that supports this flexible interpretation proposed by the AC of the regulations.

Also, for the first time we have an "official" definition of "international teleworking" (which aligns perfectly with the definition arrived at on the basis of the collaboration and observations of existing practice by all those who participated in drafting the White Paper on International Teleworking published by the Spanish Association for International Mobility - FEEX).

Accordingly, the AC defines International Teleworking/Cross-Border Teleworking as work performed:

- a.outside the employer's premises or workplace where the work is usually performed;
- b.in a Member State other than that in which the employer's premises or workplace are located; and
- c.using information technology enabling the employee to connect to the employer or the employer's business.

I think it is interesting to note that it also establishes the following points as defining features of international teleworking:

- The teleworker needs to continue performing the same tasks that they had been performing at the employer's workplace. Therefore, their duties are not changed as a result of the international telework and the telework also does not have any impact on the job market of the country in which it is performed.
- There must be an agreement between the company and the employee on the international teleworking arrangement, which must be formalised in accordance with the employment legislation of the employer's country.
- While teleworking the employee continues to perform their tasks within the scope of the organisation and control of the employer.

However, the AC does not consider it relevant to assess, for social security purposes, in whose interest the international teleworking arrangement is formalised so that if the employee requests the teleworking and the employer agrees to it, it is assumed that it is also in the employer's interest (otherwise they would not agree to the employee's request).



Basically, in line with the structure of the EU Regulation, there are two possible international teleworking scenarios in the EU/EEA:

i. Ongoing international teleworking in the same country:

This would be the case of a teleworker who asks to work remotely for a specified period of time in another country (either to take care of a family member, accompany their spouse on secondment, take advantage of the opportunity to stay longer in a holiday destination, or simply to travel.)

In this case, the AC establishes a flexible interpretation of Article 12 of Regulation (EC) No 883/2004 to accommodate international teleworking: it would be possible in these cases for the teleworker to request an A1 form in the country of origin and to continue to apply the social security legislation that they had been applying to date.

In order to apply Article 12 of the EU Regulation, it is important that the employee's international telework does not form part of their habitual work pattern and is not of an indefinite duration. It must be a temporary situation that is subject to the time limits provided for in the Regulation and any additional extensions that may arise as a result potential agreements between the Member States (the country of origin and the country where the telework is performed).

ii. International teleworking/hybrid scenarios in various Member States:

This would be the case of an employee who, habitually and successively, alternates working between one country and another under a teleworking arrangement (either on a teleworking or on-site basis).

The AC specifies that such cases of international teleworking will be subject to Article 13 of Regulation (EC) No 883/2004, which was established to resolve conflicts between laws in what are commonly known as "multi-state worker" scenarios through various rules.

Accordingly, in relation to the first of the rules provided to determine the applicable legislation, an employee who requests, for example, to be able to telework two days a week from another EU/EEA country, may continue to be subject to

Spanish social security legislation if their habitual residence for social security purposes remains in Spain and they pursue a substantial part of their activities in Spain (calculated as being 25%). In this case, it would therefore be possible to request an A1 form in Spain.

In this regard, the guidance states that a flexible interpretation that best fits the specific situation must be adopted in order to assess this 25% criterion, although we will have to see how this is actually applied by the authorities in practice.

The AC also notes that the option also remains to apply the exceptions to the general rules on applicable legislation provided for in Article 16 of Regulation (EC) No 883/2004 in the interests of certain employees or categories of employees.

The CA's guidance therefore provides an initial step towards

greater implementation of international teleworking, offering a certain degree of legal certainty. However, we must be aware that we need to consider not just the criteria of the country of origin (where the company is established) but also those of the country in which the teleworking is performed to the extent that, as is the case in Spain, they support the flexible interpretation proposed by the AC and accept the A1 forms issued by other Member States in these circumstances.

What if the employee wants to telework outside the EU/EEA? In this case, the scenario is more complicated since the option of applying a flexible interpretation to the wording of the bilateral treaties that may exist with Spain to accommodate international teleworking would be an issue that would have to be agreed with each of the Member States that signed those treaties.

Regulating international teleworking has a long road ahead, but step by step, we are making progress. Let's keep moving in this direction.

