



GROUP S

**HUMAN RESOURCES &
MANAGEMENT SOLUTIONS**

Group S, together talent works

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Welcome to Group S

Small or large company, managing your staff is a complex task and often a major challenge.

As an HR partner, Group S gives your company protection and support for the administration of your salaries and staff.



Group S, more than
a payroll provider



OUR HEART BEATS FOR BUSINESS OWNERS

GROUP 5

Teleworking from abroad?



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2. Cross border telework post COVID 19
 - ▶ Applicable legislation @ employment contract?
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 - ▶ Migration law?

1. Occasional, structural and CLA149 telework

a. Structural telework

- Regular basis (e.g. 2d/week)
- Written individual agreement = mandatory. Must include a.o.
 - Frequency
 - Moments of availability
 - Moments of technical support
 - Reimbursement by the employer of costs (can met zero if ICT-infrastructure is provided for by the employer)
 - Location(s) upon which the telework will take place

1. Occasional, structural and CLA149 telework

b. Occasional telework

- Ad hoc (e.g. private appointment, force majeure, ...)
- Request employee: verbal = ok
- Approval employer: verbal = ok
- Refusal employer: in writing (email = ok) + reason
- Agreement (individual/collective)
 - Must include: equipment, availability and reimbursement of costs
 - In writing = optional (i.e. verbal agreement = ok)

1. Occasional, structural and CLA149 telework

c. CLA 149 telework

- Temporary: 1st of January 2021 till 31st of December 2021
- Backstop
 - Only in case of telework recommended or imposed by a government
 - AND if no policy @ company < 1st of January 2021
- As of 1st of October 2021: 'de facto' only applicable @ Liège province

2. Cross border telework: contract law

a. Telework outside Belgium => which law governs the employment contract?

b. Legislation

- Rome I regulation (= EU regulation n° 593/2008)
- + supplemental legislation if outside EU

Remark: posting legislation not applicable in case of telework (unless part of secondment mission)

2. Cross border telework: contract law

c. Rome I regulation

- Scenario 1: parties \neq agreed upon the applicable law
 - Principle: law of the country where the employee 'habitually' works
 - Backstop: law of the country where the employer is based
 - Exception: if from the circumstances the contract is more closely connected with another country => law of that country applies

2. Cross border telework: contract law

- Scenario 2: parties agreed upon the applicable law (implicit or explicit)
 - Principle: chosen law applies
 - + employee protection provided by the law that would be applicable in case of scenario 1
- => Default advise: chose the law based by scenario 1
- + mandatory provisions 'regarded as crucial by the country for safeguarding its public intrests' => Best of both worlds

2. Cross border telework: social security

a. Intra EU/EEA/CH: EU regulation 883/2004

- Principle: only 1 social security (SS) regime applicable @ any given time
- Regulation 883/2004 imposes correct SS regime (thus, no choice!)
- If only 1 employer
 - If $\geq 25\%$ working time or salary @ country of residence \Rightarrow SS of that country
 - If not: SS of the country in which the employer is based
- $\leq 5\%$ working time or salary @ country \Rightarrow this country is not taken into account
- Other rules in case of multiple employers/multiple employment statutes

2. Cross border telework: social security

b. Outside EU/EEA/CH:

- SS treaty applicable?
 - E.g. SS treaty Belgium – Japan: split SS (... realistic in case of short duration telework?)
 - E.g. UK, situations commencing \geq 2021:
 - Rules regulation 883/2004 largely applicable
 - family benefits can be excluded

2. Cross border telework: social security

- No SS treaty
 - Principle: work outside Belgium cannot be subject to Belgian SS regime
 - Exceptions
 - Missions outside Belgium \leq 6 months
 - Overseas social security scheme (= voluntary regime)
- = unilateral Belgian legislation => double coverage is possible

2. Cross border telework: social security

c. Using the posting option?

- Not recommended. Telework = outside scope

d. Insurance accidents @ work

- If Belgian SS law applicable: accidents during working hours + at telework location = legal presumption of coverage
=> importance of duty roster + written registration telework location
- If other SS law applicable: check coverage for telework

2. Teleworking abroad: migration law

a. Intra EU/EEA

- EU/EEA/CH nationality & certain family members: freedom of movement
 - Including access labour market
 - no formalities during 1st 90 days (with exceptions, especially non-EU/-EEA/-CH-family members)
 - CH: transitional period for nationals of Croatia
- Others: case by case (e.g. check working permit obligation)

b. outside EU/EEA/CH

- Case by case

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