



EWE & ELM

HELPFUL REFERENCES ON CROSS-BORDER REMOTE EMPLOYMENT

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Prepared By:

EUFASA AISBL Work and Employment Working Group

EUFASA AISBL Legal Matters Working Group

www.eufasa.org

wgemployment@eufasa.org

A) INTRODUCTION

Two EUFASA AISBL Working Groups, namely Work and Employment (= EWE) and Legal Matters (=ELM) have prepared this document with the aim of compiling a list of helpful references to support family members of Foreign Service staff (=FS family members) who wish to engage in cross-border remote employment during a posting overseas.



B) OVERVIEW OF THE MAIN LEGAL ISSUES

In this section, we provide an overview of the variety of questions of relevance in the context of cross-border employment as a FS family member:

| | |
|---|--|
| Vienna Conventions on Diplomatic Relations (=VCDR) | <p>The VCDR is the main framework document of international diplomacy as it codifies rules of international law for host countries vis-a-vis the foreign mission on their territory. Among other things, it outlines privileges and immunities of diplomats and their families. The VCDR was adopted in 1961 by the UN and is still valid today.</p> |
| Social security law | <p>By which social security system are you covered? Each country has its own social security system. Depending on the country, a social security system may include reimbursement of medical costs (=health insurance), family allowance, pensions, and work incapacity allowance.</p> <p><i>References:</i> EU legislation if applicable; home & host country social security laws, bilateral social security agreements</p> |
| Tax law | <p>In which country/ies do you need to pay taxes? Each country has its own tax rules. All sources of income are taxed, including wages, pensions, benefits, income from immovable property, etc.</p> <p><i>References:</i> See presentation by <i>Gottfried Schellmann</i>; VCDR, home and host country tax laws, multilateral or bilateral double tax agreement <i>Annual EUFASA ASIBL Conference 2022</i>.</p> |
| Employment law | <p>Which labour laws apply to you? Depending on the country, labour laws address forms of employment, remuneration, conditions of work, trade unions, and industrial relations.</p> <p><i>References:</i> EU legislation if applicable; host country labour law</p> |
| Work permits/Bilateral Work Agreements | <p>Are you authorized to work as a diplomatic FS member? Very few host countries allow FS members to work as such, while the vast majority of host countries require a work permit. Countries enter into so-called "bilateral work agreement" (=BWA) to facilitate obtaining work permits.</p> <p><i>References:</i> BWA between your MFA and the receiving state, internal MFA instructions on waiver of diplomatic immunity, etc. Host country laws on work and residency.</p> |

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C) KEY DEFINITIONS IN THE FIELD OF CROSS-BORDER REMOTE EMPLOYMENT

Definitions of remote work, telework and work at home can be found on the [International Labour Organization website](#).

1) CROSS-BORDER WORK

Cross-border workers are workers who do not work in the EU country in which they live, but rather who return to their place of residence daily or at least once a week.

2) FREELANCE

Freelancing is doing specific work for clients without committing to full-time employment. Freelancers often take on multiple projects with different clients simultaneously. With freelancing, the client pays per project, per task, or per hour, depending on the agreement. ([What Is Freelancing? - Upwork](#)). In other words, a freelancer is an independent contractor who earns wages on a per-job or per-task basis, typically for short-term work. ([What is a Freelancer? - Investopedia](#)) ; as a freelancer, you offer digital products, service-based business or expertise on a paid per job basis. Considerations: virtual workspace readiness tools, certifications, skills needed, permits, special requirements.

3) REMOTE WORK

Currently, there isn't an internationally accepted definition of 'remote work'. It is also known as telecommunicating, telework, work from home, hybrid work, and other terms. However, for the purpose of this document, remote work can be described as follows: *"the practice of employees doing their jobs from a location other than a central office operated by the employer. Such locations could include an employee's home, a co-working or other shared space, a private office, or any other place outside of the traditional corporate office building or campus."*

4) TELEWORK

Like remote work, telework is currently not covered by any international statistical standards. However, the following is understood as a definition of telework.

Teleworking or "telecommuting" means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a workplace closer to home, reducing the distance traveled in a commute trip by at least half.

5) WORK AT HOME

This is a general term often used to refer to the two types described above.



D) CHECKLIST FOR SOME MAIN ISSUES

1) IMMIGRATION LAWS AND WORK PERMIT

a) Immigration law (residence status)

Helpful links:

- [Vienna Convention on Diplomatic Relations, 1961 \(un.org\)](#)
- [EU freedom of movement and residence | EUR-Lex \(europa.eu\)](#);
- [Freedom of movement and of residence - European Commission \(europa.eu\)](#)

Basics

Each country has its own set of rules and regulations that govern the immigration of individuals, including their status of residence. Status of residence refers to a foreign national's legal status in a country where he/she is not a citizen.

EU legislation

Within the EU, the above-mentioned national competence for immigration laws is restricted by EU law: One of the cornerstones of EU legislation is the freedom for EU nationals to move and reside within the EU. Since 2004, in line with Art 21 of the Treaty on the Functioning of the European Union (TFEU), EU citizens with a valid passport may:

- enter another EU [Member State](#) without requiring an exit or entry visa.
- live in another Member State for up to 3 months without any conditions or formalities;
- live in another Member State for longer than 3 months subject to certain conditions, depending on their status in the host country.

Entry and residence of FS family members

- Host country: In general, the standard residence laws of a host country do not apply to diplomats and their family members. Diplomats usually enter the host country visa-free or with a short-stay visa; after entering the country, they normally are issued a temporary residence permit and/or a long-term visa in form of a diplomatic identity card. This temporary residence status is however linked to the diplomatic status of the person concerned, i.e. if the person no longer enjoys diplomatic rights, the standard residence regulations apply again. In other words, if a FS member waives its diplomatic status when taking up paid work, s(he) must expect to apply for a residence permit under the standard rules of the host country.
- Home country: Some countries allow their diplomats to maintain a form of residence in their home country during their posting abroad. This is different for diplomats from the EU Institution and their family members who normally lose their residence in Belgium.

Some practical remarks:

- Before departing on a posting, investigate with your association/FO if a BWA exists between your government and the host country. If so, make sure you have read the text and understood it. In case there is no BWA with the host country in question, enquire if there is a de facto work arrangement in place. If this is not the case, you should contact your mission to find out if they are willing to assist you in obtaining a work permit and thus launch the discussion about such de facto work arrangement.
- Other than obtaining a local work permit, FS family members who wish to work in the host country, including remote work, will most likely need approval from the Head of Mission and/or the MFA itself. Before approval is granted, most MFAs perform a “conflict of interest” assessment. A FS family member should notify the mission prior to accepting any job offer. Please reach out to the HR Department of your mission.
- As already mentioned, taking up paid employment means that your immunity is at least partially waived. Based on the VCDR, it is normally the ministry that decides on the waiver of immunity after a thorough security analysis.

2) SOCIAL SECURITY

Helpful links:

- [International social security agreements | International Social Security Association \(ISSA\)](#)
- [Social security in the EU - Your Europe \(europa.eu\)](#)
- Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (*applicable for EU Member States since May 1st, 2010; applicable in relation to the EEA states since June 1st, 2021 (some older regulations still applicable); applicable in relation to Switzerland since April 1, 2012.* [EUR-Lex - 02004R0883-20140101 - EN - EUR-Lex \(europa.eu\)](#)
- [European Union - Framework agreement on cross-border telework finalised - BDO](#)

Basics

Each country has its own social security laws. As a general rule and according to the principle of territoriality, persons, whether self-employed or as employee, are subject to the social security laws in the country in which they work. This is also the country where social security contributions must be paid. The coverage usually extends to all types of social security benefits (health and pension insurance in particular go “hand in hand”).

IMPORTANT: As social security laws are national competence, each case must be examined on its own merits, there is no “one size fits all” solution. Therefore, you should contact an advisor on international social security matters prior to being posted.

International social security agreements:

Remember that more than one social security system may apply. Fortunately, however, many countries have so-called international social security agreements in place. International social security agreements have two main purposes. First, they eliminate dual social security taxation, the situation that occurs when a worker from one country works in another country and is required to pay social security taxes to both countries on the same earnings. Second, the agreements help fill gaps in benefit protection for workers who have divided their careers between several countries.

EU legislation:

While each EU country still has its own social security system, EU rules coordinate these systems to make sure people moving to another EU country do not lose their social security cover (for example, pension rights and healthcare) and always know which national laws apply. Under EU rules, someone can be subject to only one country's social security laws at a time – so social security contributions must be paid in that country only. For more information, see at [Social Security abroad](#).

The above-mentioned territoriality principle applies with two main exceptions:

- Persons who are posted abroad for less than two years. See [EU Directive 96/71/EC of 16 December 1996 concerning the posting of workers](#)
- Persons who are in simultaneous employment.

For more information on the applicable social security system within the EU, see [Social security cover when you live or work in another EU country – Your Europe \(europa.eu\) FAQs|Social security cover when you live or work in another EU country – Your Europe \(europa.eu\); Employment, Social Affairs & Inclusion](#)

Some practical remarks

- Social security agreement: Enquire if your home country has a social security agreement with your future host country. Each of these agreements is unique and there are major differences between them, familiarise yourself with the applicable rules.
- Health insurance: Always remember that there is a realistic chance of losing the health insurance cover provided by MFA as soon as you start working, especially if your income exceeds a certain threshold. This obliges you to take out a private health insurance. Private health insurances abroad can be outrageously expensive (for instances in the USA, Canada, and also Israel). Some MFA Spouses Association have managed to enter into framework agreements with the insurers back home in order to enable their members who work abroad to receive an affordable health care coverage, for instances the Austrian MFA Family Association with the insurance “Generali”.

- Pension insurance:

- The pension rights of many FS family members continue to be severely affected by accompanying FS staff on overseas assignments. Check all forms of pension solutions. i) enquire about possible supplementary pension contributions from your own MFA; ii) find out about the possible state minimum pension in your home country; iii) if necessary, take out a private pension insurance in good time.
- Remember that the correct determination of accumulated insurance periods and benefit entitlements of persons who have worked in several countries is often very complex. Try your best to remain on top of your pension situation from the beginning and not only when your retirement age is approaching. Analyze your pension situation ideally before the first posting and again at the beginning of each posting. Keep track of accumulated insurance periods by obtaining records on your pension contributions from all the countries you worked in (easier when you are in the respective country than from abroad).



3) TAXATION

Helpful links:

- [Vienna Convention on Diplomatic Relations, 1961 \(un.org\)](#)
- [Tax treaties – OECD](#)
- [Double taxation – Your Europe \(europa.eu\)](#)

Basics

Each country has its own laws, regulations and instructions on taxation.

IMPORTANT: As taxation laws are national competence, no two cases are the same and each case must be examined individually. Taxation depends on various parameters such as your tax domicile, your tax residence, source of income, form of employment, location of employment, location of employer, family status, nationality etc. Therefore, we strongly advise you to contact an international tax advisor prior to being posted.

Vienna Convention on Diplomatic Relations (=VDCR)

Under the VDCR, FS staff and their family members are exempt from income tax in the receiving State. However, the exemption only applies to income received for official services performed for their government in the host country. If and when FS staff/family members generate income from economic activities in the host country, this immunity does not apply. The person becomes liable to tax under the law of the host country.

Double Taxation Avoidance Agreements

The core problem with taxation is that more than one state may have a right of taxation in your case. Most countries in the world follow the OECD Model Tax Convention on Income and on Capital Tax, according to which income can be taxed by:

- the state of residence, i.e. the state in which you are a tax resident, usually on the entire worldwide income;
- the state of source, i.e. the state in which the income in question was generated, on this income only.

To make things even more complicated, you may be a tax resident in more than one state. Why is this? For the simple reason that each country has its own tax laws and, more importantly, its own definitions of tax residence; and these rules can sometimes, collide.

So remember that your income may be taxed in more than one country. Fortunately, however, most countries have so-called [Double Taxation Avoidance Agreements](#). These agreements usually spare you from double taxation:

- Under many bilateral tax agreements, the amount of tax you paid in the country where you work will be offset against the tax you owe in your country of residence;
- In other cases, the income earned in the country where you work might be taxable only in that country and exempt from tax in your country of residence.

Some practical remarks

- Inquire in advance, whether your home country has (bilateral or multilateral) double tax agreements with your future host country. Keep in mind that each double tax agreement is unique and that there are important differences between them, so familiarise yourself with the applicable rules.
- Know your tax residence. What makes determining your residency so difficult is that residency depends very much on the facts and circumstances of your life, and since your facts and circumstances are different from those of any other expatriate, there are no hard and fast rules to determine your residency status. The OECD Tax Model Convention and most double tax agreements determine your tax residency based on your:
 - permanent home,
 - center of vital interests
 - habitual abode (183 days regulation in use in most of the countries) or
 - nationality
- When in doubt about your tax residency/ies, it is highly advised to contact the local tax administration for a tax residency certificate.

If there isn't a double tax agreement between your home country and your host country or if the existing double tax agreement does not apply to you (e.g., in some case of spouses & partners of EU Delegation staff), you may be taxed in both countries.



E) SOME OBSERVATIONS ON REMOTE WORK AND FS FAMILY MEMBERS

Helpful link:

- [Remote work for the cross-border workforce: 10 keys to success \(pwc.com\)](#)
- [Legal implications arising from cross-border remote work - Lexology](#)
- [Cross-border remote work action checklist | Vistra](#)
- [Remote-working-across-international-borders-key-risks-and-issues.pdf \(cov.com\)](#)

Basics

While remote work has become increasingly mainstream, there remains a lack of consistent legal treatment at either the international or on local level.

Remote work in the EU

The European framework agreement on telework, signed by the EU-level social partners in 2002, defines telework and sets up a general framework at European level for the working conditions of teleworkers to be implemented at the level of the EU Member States. It aims at reconciling the needs for flexibility and security shared by employers and workers. In June 2020, the EU-level social partners signed a framework agreement on digitalisation, which outlines relevant provisions on the 'modalities of connecting and disconnecting', to be implemented at national level.

Helpful links: [Teleworking | EUR-Lex \(europa.eu\)](#); [Teleworking | European Foundation for the Improvement of Living and Working Conditions \(europa.eu\)](#); [European Union - Framework agreement on cross-border telework finalised - BDO](#)

In other words, legislation on remote work must be adopted by the individual EU Member State, some of which are in the process of doing so, as can be seen in this guide: [20201013-european-guide-to-support-employers-teleworking.pdf \(closte.com\)](#)

Remote work and FS Family Members

Concerning remote work for FS family members specifically, the majority of MFAs in Europe have not yet established policies, regulations, or legal frameworks to address this question. Among the very few exceptions is **Germany** that has issued initial policy documents. Some of the associations are beginning to organise webinars in this field, including Germany, Switzerland and the UK.

For now, there remains uncertainty among many MFAs if the existing BWAs cover remote work. Some MFAs have expressly stated that their BWAs cover remote work, including Germany and the Netherlands, the majority are silent. FS family members interested in remote work overseas for a home country or third country-based employer should be aware that the host country may consider such employment to be work in their country, such that a work permit is required.

Having said this, we note that US State Department has recently published a guidance document for their diplomatic family members on the internet: [Telework Overseas Guidance for Family Members \(state.gov\)](https://www.state.gov/telework-overseas-guidance-for-family-members)

Text below is from this very helpful guidance document published by the US MFA on the internet and slightly adapted.

Under the VDCR, FS family member have a duty to comply with the laws and regulations of the host country, including any laws on work permit and payment of local taxes. As a general rule, if FS family members work in the host country, including telework, they have a responsibility to obtain a work permit and pay local taxes. The key question for working FS family members under the VDCR is therefore always: When is a FS family member classified as working in the host country or vice versa, how can this classification be avoided? (This question arises in fact regardless of whether the work is in person or remote.) This question is already difficult to answer in the area of in-person work, but it is even more complicated in the case of remote work due to the aforementioned lack of rules and regulations. For the time being, this question will therefore be decided on a case-by-case basis, and we can only give you generalised guidance.

Starting point is that the FS family member would be working remotely for an employer (or clients in case of self-employment or freelancing) which are based outside the host country, i.e. in the home country or a third country. FS family members are advised to enter into a remote working arrangement with their employer or clients, which designates the place of work. The goal of this arrangement is to ensure that the FS family member's workplace corresponds to the physical location of the employer/client outside the host country. The remote working arrangement should consider all of the following criteria:

- Employee is on the payroll of an employer in the home country / all clients of freelancer are located in the home country.
- Employee/freelancer retains an address of record in the home country.
- Employee/freelancer is paid in home country currency into a bank account in the home country.
- Employee's/freelancers duties directly relate to and benefit the operations of the employer/clients.
- Employee/freelancer has no professional role or interaction in the local economy at his/her overseas location, including:
 - Employee's/freelancer's work site/space is in the employee's/freelancer's personal residence and NOT in the office of a local branch of the employer or at a locally rented business space.
 - Employee's/freelancer's duties do not involve business on the local economy (on behalf of the employer/clients)
 - Employee/freelancer does not employ staff related to their work in the host country.

IMPORTANT: Even if all of the above conditions are met, FS family members interested in remote work for a home country or third country-based employer/client should be aware that the host country may consider such employment to be work *in* their country after all resulting in you having to obtain a work permit and paying local taxes.

F) RECOMMENDED ACTION FOR MINISTRIES OF FOREIGN AFFAIRS

- Facilitate further bilateral agreements/MoUs
- Compile a list of testimonials in order to facilitate exchange of experiences
- Compare practices with other MFAs and spouses' associations in order to get best practices
- Compare practices with International Companies and share information with FS families
- Share relevant employment guidance with FS families (especially) when going on a posting overseas
- Have the embassies/representations in the host country commit to assisting family members
- Provide a list of specialists' advisors who FS families can refer for advice.



G) USEFUL LINKS

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| Austria | Austria Agreements on Social Security Social Security International https://kpmg.com/at/de/home/insights/2021/07/acnews-homeoffice.html https://www.weka.at/news/Personal/Arbeitsrecht/Ab-01.07.2023-gelten-wichtige-Neuerungen-fuer-grenzueberschreitende-Telearbeit https://www.arbeiterkammer.at https://wts.com/at-de/experten/schellmann-gottfried~contact-person?language=de |
| Belgium | Télétravail Service public fédéral Emploi, Travail et Concertation sociale (belgique.be) Fiscalité SPF Finances (belgium.be) Service Public Fédéral - Sécurité Sociale (belgium.be) |
| Czechia | https://www.mpsv.cz/ https://www.mfcr.cz/ https://www.cssz.cz/ |
| Estonia | |

G) USEFUL LINKS

| | |
|----------------|--|
| European Union | <p>Taxation</p> <ul style="list-style-type: none"> • EU family members: Jacques Buekenhoudt, European Union Officials and Taxation - Impact of the Protocol on Privileges and immunities on their Tax Status, May 2017: EU officials - Impact of the protocol on privileges on their tax status • FS family members on posting in Brussels: Taxpatria, Am I liable for taxes in Belgium as the spouse of a diplomat? Taxes for spouse of a diplomat in Belgium Taxpatria <p>Social Security</p> <ul style="list-style-type: none"> • General overview: Social Security in Belgium Belgium.be; Coming2Belgium <p>Contacts: BWA</p> <ul style="list-style-type: none"> • EU family members: Please get in touch with the EEAS Family Officer <p>Taxation</p> <ul style="list-style-type: none"> • EU family members: Jacques Buekenhoudt, Dugardyn & Partners, Brussels, jb@d-lawfirm.be, Contact Dugardyn & Partners (d-lawfirm.be) • FS family members: Taxpatria, Brussels office, Contact us Taxpatria <p>Social Security</p> <ul style="list-style-type: none"> • FPS Social Security: Federal Public Service - Social Security (belgium.be) |
| Finland | <p>https://tem.fi/en/services-for-citizens Taxation of income earned abroad - vero.fi https://www.etk.fi/en/work-and-pensions-abroad/insurance-while-working-abroad/</p> |

| | |
|----------------|---|
| France | |
| Germany | <p>German Pension Insurance website (Deutsche Rentenversicherung) Benefits German Pension Insurance website (Deutsche Rentenversicherung) International Info German Pension Insurance website (Deutsche Rentenversicherung) Insurance Payroll Service Germany Double taxation agreements Germany: https://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuerrecht/Staatenbezogene_Informationen/staatenbezogene_info.html</p> |
| Hungary | <p>Double taxation: https://nav.gov.hu/en/taxation/double_taxation_treaties</p> |
| Ireland | <p>https://www.citizensinformation.ie/en/employment https://www.citizensinformation.ie/en/money_and_tax/tax/income https://www.citizensinformation.ie/en/social_welfare/irish_social https://www.jobs.ie/ https://jobsireland.ie/ https://www.citizensinformation.ie/en/employment/ https://www.pwc.ie/ Department of Social Protection https://www.gov.ie/en/organisation/department-of-social-protection/</p> |
| Italy | |
| Latvia | <p>State Employment Agency, https://www.nva.gov.lv/en State Revenue Service, https://www.vid.gov.lv/en Office of Citizenship and Migration Affairs, https://www.pmlp.gov.lv/en Ministry of Finance, https://www.fm.gov.lv/en international tax advisers that provide service in English: https://www.grantthornton.lv/en/pakalpojumi/tax-services/ https://www.pwc.com/lv/en.html https://www.ey.com/en_lv https://www.sorainen.com/service/tax/ Ministry of Welfare, https://www.lm.gov.lv/en State Social Insurance Agency https://www.vsaa.gov.lv/en</p> |

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|-----------------------|---|
| Lithuania | International agreements Ministry of Social Security and Labour |
| Luxembourg | |
| Netherlands | |
| Portugal | http://www.iefp.pt/ www.eportugal.gov.pt http://www.seg-social.pt/ |
| Slovenia | Taxation: https://www.fu.gov.si/en/taxes_and_other_duties/areas_of_work/international_taxation/ Social Security: https://www.zzzs.si/en/compulsory-health-insurance/inclusion-in-the-compulsory-health-insurance/ Useful contacts: on taxation: https://www.gks.si/home.html on jobs: https://www.ess.gov.si/en/jobseekers |
| Spain | Spanish Bilateral Social Security Agreements Double Taxation agreements Spain: https://administracion.gob.es/pag_Home/en/Tu-espacio-europeo/derechos-obligaciones/ciudadanos/trabajo-jubilacion/fiscalidad/doble-imposicion.html |
| Switzerland | Factsheet: Tax Information for FDFA Spouses/Partners (2020) https://www.ch.ch/en/taxes-and-finances/paying-taxes/ https://www.estv.admin.ch/estv/en/home/fta/tax-statistics/calculate-taxes.html https://www.ahv-iv.ch/p/890.e |
| United Kingdom | UK Social Security Agreements UK Tax Treaty Agreements |

Disclaimer: Please note that this document does not claim to provide comprehensive information about possible legal challenges, nor is it intended as specific legal advice, as each case needs to be examined on its own merits; taking up remote/online work during a posting without the potentially necessary "permits" may lead to legal consequences.

CONTACT US FOR FURTHER INQUIRIES



EWE & ELM



www.eufasa.org
wgemployment@eufasa.org