



TALENT HUB

Supporting Copenhagen Capacity to strengthen retention and EU-Mobility of skilled migrants through collaborative multi-country coordination on talent retention and circulation in the EU

OVERVIEW: DOMESTIC AND CROSS-BORDER REMOTE WORKING MODALITIES IN THE EU

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The overview has been developed as part of a series of products under the Talent Hub project. It is accompanied by the policy brief “Cross-Border Remote Work & Intra-EU Labour Mobility” that explores possible areas of intervention for enhancing cross-border remote work in the EU generally but Denmark and Germany specifically.

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INTRODUCTION

'Cross-border remote work', also known as cross-border telework, has in later years been instrumental in integrating European labour markets but also in expanding the boundaries of traditional cross-border work, particularly in addressing shortages. Approximately 1.7 million cross-border workers carrying out in-person work already contribute to the EU workforce, representing a significant portion of those employed in shortage occupations.¹

Remote work represents a transformative shift in the way people work, enabled by advancements in technology and changes in work culture. The catalyst for the accelerated adoption of remote work across the EU was undoubtedly the outbreak of the COVID-19 pandemic. As countries implemented strict measures to contain the virus, remote work quickly became a necessity. What was once a sporadic practice for a limited number of employees evolved into a mainstream working arrangement. As the pandemic-induced social distancing measures eased, it became evident that remote work was not merely a temporary response to a crisis but a lasting transformation in the world of work domestically and internationally.

However, despite the benefits and growing prevalence of remote work, there is a lack of coordination and harmonisation at the European level among Member States. Remote work legislation² varies significantly across countries, leading to diverse regulatory models that influence employment relations, management practices, and compliance requirements. The regulatory diversity is exacerbated in the case of remote work across country borders, **cross-border remote work**, where the fiscal implications add complexity to this evolving landscape. Taxation and social security concerns arise for both employees and employers when work crosses national borders, physically or digitally. Moreover, the mobility of **third country nationals** (TCNs) further complicates the feasibility of cross-border remote work. Legal frameworks differ for these individuals, and they may face hurdles when seeking employment across EU borders. The following sections explore the state of domestic and cross-border remote work regulation, and the fiscal implications for employers and employees as well as the mobility and working rights of third country nationals in the EU.

Definition: In this paper, "cross-border work" refers to the practice of regularly crossing a national border to carry out in-person work in another - often neighbouring - state. Domestic "**remote work**" (also known as "telework") is here defined as the practice of carrying out work for a domestic employer mainly from one's own home or another location in the same country or occasionally from another country. "**Cross-border remote work**" signifies a working relation where the employee permanently or most of the time works remotely for an employer located in another country than the country of residence of the employee.

REMOTE WORK IN EU MEMBER STATES

Remote work, domestic as well as cross-border, constitutes a paradigm shift for both employees and employers, allowing the first to better balance work with social and personal life,³ and the latter to tap into

¹ European Commission (2023) Annual report on intra-EU labour mobility 2022

² Also known as teleworking legislation, see definition box.

³ Popovici, V., & Popovici, A.-L. (2020). Remote Work Revolution: Current Opportunities and Challenges for Organizations. Economic Sciences Series Volume XX, Issue 1, 468-472.

a larger talent pool, alongside a more satisfied and diverse workforce.⁴ Although there is a lack of an internationally recognised definition, according to the European Framework Agreement on Telework, this can be defined as, ‘a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work that could be performed at the employer’s premises is carried out away from those premises on a regular basis.’⁵ Telework as defined in the Framework Agreement is here referred to as remote work (i.e. work performed outside of the traditional office)⁶ enabled by the use of information and communication technology (ICT).

The growing incidence of remote work across the EU followed the outbreak of the COVID-19 pandemic in 2020 and related measures to curb the spread of the virus. The introduction of restrictive measures (e.g. quarantine) catalysed the need to be able to perform work independently of the possibility to access the office. According to Eurofound (2022), the number of employers working from home occasionally or regularly increased from 11 per cent to 22 per cent in 2021, when compared with 2019, advancing the rate of remote work by approximately six years compared to pre-pandemic projections. That is, the rapid increase in remote work modalities would not have been reached before 2027 had it not been for the pandemic.⁷ In 2022, Ireland, Finland and Sweden were among the countries reporting the highest percentage of employed people usually working from home.⁸ Denmark and Germany were also among the countries with a high percentage of employees declaring that they usually work from home, accounting for 11.8 per cent and 14.5 per cent respectively, which is above the average when compared with the EU (10.2%).

With respect to the impact of remote work on employees and organisations, studies point to both **challenges** and **opportunities** for the well-being and productivity of individuals. Several studies highlight the potential benefits of remote work when it comes to work-life balance. For instance, a survey of more than 400 French nationals revealed that 95 per cent of respondents experienced an enhanced quality of life due to remote work, with 88 per cent achieving a **better work-life balance**.⁹ This improvement was attributed to increased time spent with family (79%), engagement in personal activities (66%), and participation in local community endeavours (47%).

Additionally, the European Working Conditions Survey (EWCS) conducted by Eurofound in 2015, revealed that remote workers perceived a slightly better alignment between their working hours and family or social commitments compared to those working exclusively at their employer’s premises.¹⁰ In the ‘**Remote Work & Digital Nomads**’ survey¹¹ carried out by IOM Denmark and IOM Germany in November 2023, 91 per cent of employees and 79 per cent of employers reported that remote work had a ‘positive’ or ‘very positive’ impact on **well-being**.¹² If well implemented, remote work policies can benefit enterprises as well

⁴ Vaiman, V., Cascio, W. F., Collings, D. G., & Swider, B. W. (2021). The shifting boundaries of talent management. *Human Resource Management*, 60(2), 253-257.

⁵ Etuc, Unice, Ceep and Ueapme (2002) ‘Implementation of the European Framework Agreement on Telework’. Available at: https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf

⁶ Vartiainen, M. (2021). Telework and remote work. In *Oxford Research Encyclopedia of Psychology*.

⁷ Eurofound (2022), *The rise in telework: Impact on working conditions and regulations*, Publications Office of the European Union, Luxembourg

⁸ Statista (2023) *Percentage of people usually working from home in Europe 2022, by country*

⁹ Lasfargue, Y., Fauconnier, S. (2015) OBERGO Enquête 2015 sur les impacts du télétravail

¹⁰ Predotova, K. & Vargas Llave, O., 2021. *Workers want to telework but long working hours, isolation and inadequate equipment must be tackled*, Eurofound. Ireland.

¹¹ On the survey, see the fact box on this page.

¹² A total of 68 respondents participated in the Remote work and Digital Nomads survey rolled out under the Talent Hub Project. Seventy-two of them were employees, and 19 of them employers all based across the EU Members States. For more information please refer to the following fact box.

as employees. For companies, remote work arrangements are found to be a way of **improving staff retention**.¹³ This finding is reflected in the IOM survey previously mentioned, where for 94 per cent of employees the availability of remote work arrangements decreases turnover intentions and for 98 per cent this flexibility makes organisations more attractive employers. Kelly et al (2008) found that employers indeed use remote work arrangements as a recruitment tool to attract **high-skilled professionals**, the main group of workers demanding flexible work schedules.¹⁴

While these findings emphasise the potential of remote work to positively influence the delicate balance between professional and personal life, the impact of remote work on work-life balance can vary. The *Living, working and COVID-19 e-surveys*, carried out by Eurofound between 2020 and 2021, found that there is a positive correlation between the number of hours worked from home and total weekly working hours. Compared to exclusively onsite workers, remote workers are more likely to work between 41 and 60 hours.¹⁵ This trend is consistent across European countries, indicating a potential issue of work intensity associated with the use of information and communication technology (ICT).

Further, remote workers, especially those with caring responsibilities, are more likely to work in their free time. Gender differences also emerge, with a higher proportion of women working in their free time compared to men, particularly among those with children.¹⁶ While remote work has demonstrated its potential in **facilitating better work-life balance**, the challenge lies in managing the interaction between work and caregiving roles to avoid negative consequences for parents and gender equality. The pandemic has underscored the need for effective work-life balance policies and education for both employers and employees on the responsible use of working time autonomy. The introduction of a 'right to disconnect' in some European countries reflects a recognition of the potential stress and boundary-blurring associated with continuous availability and increased communication channels.¹⁷

Remote Work & Digital Nomads survey – Addressing talent attraction, mobility and retention

The 'Remote Work & Digital Nomads' survey was carried out in the context of the [Talent Hub EU](#) project implemented by IOM in Denmark and Germany together with the [European Commission's Directorate-General for Structural Reform Support \(DG Reform\)](#) and [Copenhagen Capacity \(CopCap\)](#). The project aims at enhancing the retention and mobility of skilled migrants within the EU through coordinated efforts in talent circulation, including via technical support to develop strategies related to talent retention, attraction, and nurturing. In this context, the survey was rolled out to better understand the evolving landscape of remote work and its potential to improve talent attraction, mobility, and retention within the EU with a specific focus on remote work, cross-border remote work and digital nomadism. In total, 68 respondents participated in the online survey, of which 49 responded as employees (72% of all respondents) and 19 as employers (28% of all respondents), located in different locations within the EU. The respondents represented the private, public, and non-profit sector. Out of 68 respondents, 40 respondents indicated that their organisation operates in Spain, followed by 29 respondents indicating France.¹⁸ The limited survey was not intended to provide statistically representative results but rather

¹³ Wheatley, D. (2012), 'Work-life balance, travel-to-work and the dual career household', *Personnel Review*, Vol. 41, No. 6, pp. 813–831.

¹⁴ Kelly, E. L., Kossek, E. E., Hammer L. B., Durham, M., Bray, J., Chermack, K., Murphy, L.A. and Kaskubar, D.(2008), 'Getting there from here: Research on the effects of work-family initiatives on work-family conflict and business outcomes', *The Academy of Management Annals*, Vol. 2, pp. 305–349.

¹⁵ Predotova, K. & Vargas Llave, O., 2021. *Workers want to telework but long working hours, isolation and inadequate equipment must be tackled*, Eurofound. Ireland.

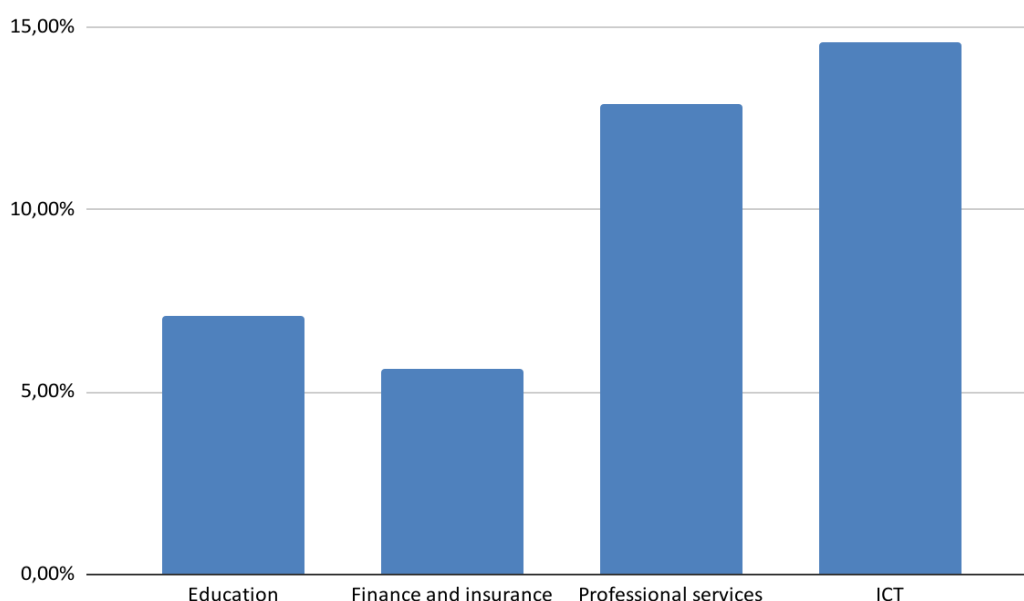
¹⁶ *ibid*

¹⁷ Lerouge, L., & Trujillo Pons, F. (2022). Contribution to the study on the 'right to disconnect' from work. Are France and Spain examples for other countries and EU law? *European Labour Law Journal*, 13(3), 450-465. <https://doi.org/10.1177/20319525221105102>

¹⁸ Selection of more than one EU MS was possible in survey.

Despite the challenges, remote work arrangements are a new reality of workplace organisation. While social-distancing and mobility restrictions increased the adoption of remote work arrangements, their easing did not lead to a reduction of remote work, suggesting that the expanded work flexibility is here to stay.¹⁹ The potential for remote work is greater in knowledge and ICT intensive occupations, with sectors such as **finance** and **insurance, information and communication, education**, as well as **professional, scientific** and **technical services** likely to be those affected the most.²⁰ According to [CEDEFOP](#) (European Centre for the Development of Vocational Training) data,²¹ many EU countries are going to witness employment growth across these sectors between 2023 and 2035, pointing at a great potential of remote work modalities further integrating in-office work arrangements in the foreseeable future.

Figure 1. EU-27 future employment growth per sector, 2022-2035



Data source: [CEDEFOP, Future Employment Growth, Skills Intelligence database](#), September 2023

Across the European Union, the ICT services sector is expected to witness the largest employment growth in the 13-year period from 2023 to 2035. Poland, Spain, and Croatia are among the Member States with the largest expected employment growth in this sector, with a projected 31 per cent increase respectively. Denmark ranks seventh, with an expected growth of 28.3 per cent. Despite the positive outlook, not all EU countries display positive ICT employment trends. In Germany, Lithuania and Hungary, ICT employment is expected to decline with Germany observing the heavier decrease with a -9.8 per cent projection.

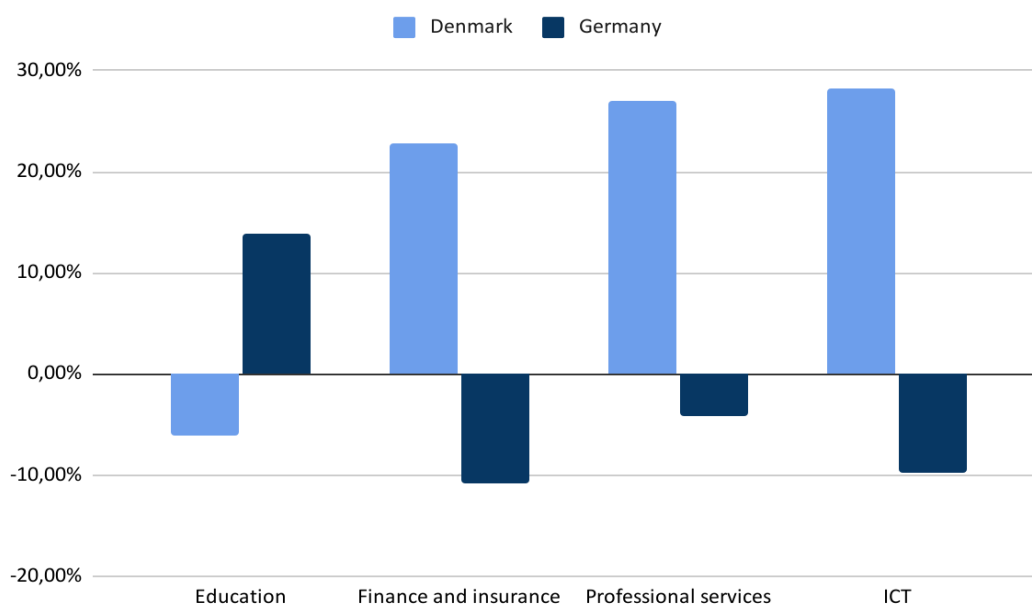
¹⁹ Adrijan, P., et al. (2021), "Will it stay or will it go? Analysing developments in telework during COVID-19 using online job postings data", OECD Productivity Working Papers, No. 30, OECD Publishing, Paris, <https://doi.org/10.1787/aed3816e-en>.

²⁰ Sostero M., Milasi S., Hurley J., Fernández-Macías E., Bisello M., Teleworkability and the COVID-19 crisis: a new digital divide?, Seville: European Commission, 2020, JRC121193

²¹ Cedefop, Future Employment Growth, Skills Intelligence database (accessed 27 September 2023)

However, employment loss is to be registered mostly among ICT technicians, while demand for ICT professionals will be on the rise.²² More generally, **Germany** and **Denmark** differ substantially in their future skills demand. While employment in the education sector in Germany is expected to grow, the projections for Denmark are negative. Yet, when comparing the expected employment growth in the professional services, finance and insurance sectors, the situation is the opposite with Denmark expected to experience important growth while Germany looks forward to a declining employment demand in these industries.

Figure 2. Denmark and Germany future employment growth per sector, 2022-2035



Data source: [CEDEFOP, Future Employment Growth, Skills Intelligence database](#), September 2023

Across different sectors, professionals and managers represent the occupational groups with higher rates of remote work, however, certain technical and clerical jobs also display a high potential for remote work to be implemented.²³ Moreover, professionals, i.e. knowledge workers, also represent 57 per cent of occupations that are in widespread shortage and 47 per cent of those in severe shortage across the EU according to the European Labour Authority.²⁴ Against a backdrop of relatively low unemployment rates, increasing job vacancy rates²⁵ and the low level of inactive population (in certain countries),²⁶ seeking to fill these positions by sorting only to national workers is not a sustainable option.

Notably, according to Eurostat data, in the last quarter of 2022, Denmark saw a 4.6 per cent unemployment rate (below the 6.1% average in the EU-27),²⁷ seventh-lowest rate of inactive population (19.6% compared

²² CEDEFOP, Future Employment Growth, Skills Intelligence database, ICT-services. Accessed on 02 October 2023.

²³ Sostero, M., Milasi, S., Hurley, J., Fernandez-Macías, E., & Bisello, M. (2020). Teleworkability and the COVID-19 crisis: a new digital divide? (No. 2020/05). JRC working papers series on labour, education and technology.

²⁴ European Labour Authority (2023) Report on Labour Shortages and Surpluses 2022

²⁵ Eurostat (2023). Job vacancies in number and % - NACE Rev. 2, B-S, quarterly data. Unemployment by sex and age monthly data. Accessed on 02 October 2023.

²⁶ For instance, the Netherlands reports one of the lowest unemployment rates (3.5%), third-lowest rate of inactive population (16.3%) and one of the highest job vacancy rates (4.9%) in the EU.

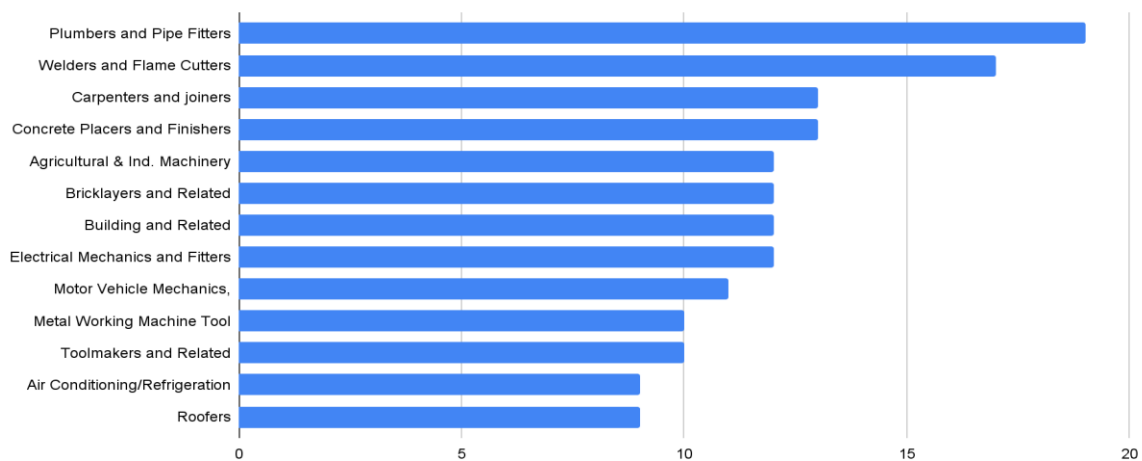
²⁷ Eurostat (2023), Unemployment rates by sex, age and citizenship (%). Accessed on 15 October 2023.

to 25.5% in the EU-27)²⁸ and a 3 per cent vacancy rate according to Statistics Denmark²⁹ (above the 2.9% EU average).³⁰ Similarly, in the last quarter of 2022, Germany presented the fourth-lowest unemployment rate in the EU (4%), a below average inactive population rate (20.6%) and the fifth-highest job vacancy rate (4.4%). **Cross-border remote work** can allow employers across the EU to potentially tap into a wider workforce and meet labour demands.

IN-PERSON & CROSS-BORDER REMOTE WORK

Cross-border workers carrying out in-person work already facilitate the integration of European labour markets, contributing to the reduction of labour shortages across Member States. Such workers, also referred to as ‘frontier workers’, amount to 1.7 million and represent around 1 per cent of the currently employed working age population in the EU.³¹ Moreover, they are prevalently employed in occupations identified as shortage occupations. Twenty-five per cent of cross-border workers are employed in craft and related trades occupations³² which in turn account for 13 out of the 28 most widespread shortage occupations identified by the European Labour Authority (ELA) in 2021 across all Member States.³³ Figure 3 below represents the craft and trade occupations in widespread shortage across the EU, showing that more than half of the Member States experience shortage in the top two occupations reported, with a peak of 19 EU countries struggling to find enough plumbers and pipe fitters. Without the contribution of cross-border work, meeting labour demands would be further complicated. A further 18 per cent of cross-border workers are employed in professional occupations which are also deemed in widespread shortage across EU countries, particularly in the healthcare and IT sector.

Figure 3. Craft and related shortage occupations and numbers of countries reporting, 2021



Data source: European Labour Authority, Report on Labour Shortages and Surpluses, 2021

France, Germany, and Poland are the EU countries whose citizens engage the most in cross-border work with respectively 424,000, 213,000 and 190,000 residents working in a country that is a member of either

²⁸Eurostat, Inactive population as a percentage of the total population, by sex and age (%). Accessed on 15 October 2023.

²⁹ Statistics Denmark, Job vacancies. Accessed on 15 October 2023.

³⁰ Eurostat, Job vacancy statistics by NACE Rev. 2 activity - quarterly data (from 2001 onwards). Accessed on 15 October 2023.

³¹ European Commission (2023) Annual report on intra-EU labour mobility 2022

³² European Commission (2023) Annual report on intra-EU labour mobility 2022

³³ European Labour Authority (2022) Report on Labour Shortages and Surpluses 2021

the EU or the European Free Trade Agreement area (EFTA).³⁴ Germany is also the main destination country with 378,000 cross-border workers, amounting to 1 per cent of the total workforce. Despite the regional interconnectedness, cross-border workers in the Nordic Region represent 0.5 per cent of the workforce, which is well below the EU average percentage of registered cross-border workers.³⁵ According to the Nordic Statistics Database, Sweden is the main sending country with 40,600 workers commuting to another Nordic country for work, while Norway and Denmark are the largest receivers with respectively 27,998 and 16,455 incoming workers from within the region.³⁶ The below average contribution of commuters to the cross-border labour market of the Nordic region points to an untapped potential that can be better used to face labour market challenges.

Table 1. Main countries of origin and destination for cross-border workers in the EU/EFTA, 2021

Main Origin Countries			Main Destination Countries		
Member State	Total	% workforce	Member State	Total	% workforce
France	424 000	1.7%	Germany	378 000	1%
Germany	213 000	0.6%	Switzerland	345 000	8%
Poland	190 000	1.2%	Luxembourg	212 000	44%

Data source: European Commission, Annual report on intra-EU labour mobility, 2022

Remote work can further scale up the role of transnational labour mobility to address labour market imbalances across the EU. Whilst an EU-level estimate of the number of cross-border remote workers is not available, the remote work arrangements put in place as adaptation to the implemented pandemic restrictions may have impacted the number of workers in this category. According to [Eurofound](#), the EU agency for the Improvement of Living and Working Conditions,³⁷ more than three-quarters of surveyed employees across Europe manifested the will to continue having a remote work arrangement even after ease of restrictions,³⁸ which points to the potential impact of remote work modalities on **employee satisfaction and expectations**.

The absence of official statistics on the topic reflects a more general lack of a concerted coordination at a European level. With regards to remote work legislation, the aforementioned European Framework Agreement on Telework (2002),³⁹ and the more recent European Framework Agreement on Digitalisation (2020)⁴⁰ are the only European initiatives that specifically focus on the topic of cross-border remote working modalities. However, these are independent agreements signed by European social partners that

³⁴ European Commission (2023) Annual report on intra-EU labour mobility 2022

³⁵ Lundgren, A., Bogason, A. (2022) Nordregio, Re-Start Competence mobility in the Nordic Region. Available at: <https://pub.nordregio.org/wp-2022-4-re-start-competence-mobility-in-the-nordic-region/introduction.html>

³⁶ Nordic Statistics Database (2021) Mobility in the Nordic region I – Cross-border commuting. Available at: <https://www.nordicstatistics.org/news/mobility-in-the-nordic-region-i-cross-border-commuting/>

³⁷ European Foundation for the Improvement of Living and Working Conditions. Available at: <https://www.eurofound.europa.eu/en/home>

³⁸ Eurofound (2020), Living, working and COVID-19, COVID-19 series, Publications Office of the European Union, Luxembourg.

³⁹ Etuc, Unice, Ceep and Ueapme (2002) 'Implementation of the European Framework Agreement on Telework'. Available at: https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf

⁴⁰ Etuc, BusinessEurope, SMEUnited, Ceep (2020) European Social Partners Framework Agreement on Digitalisation. Available at: https://www.etuc.org/system/files/document/file2020-06/Final%2022%2006%2020_Agreement%20on%20Digitalisation%202020.pdf

bind the relative national organisations to implement the accorded clauses in line with each country's practices and procedures, thus leading to great diversity in the management of domestic remote work across the EU.⁴¹ Member States can be differentiated according to two main dimensions: (1) the presence (or absence) of statutory legislation on telework and (2) the role of social dialogue and collective bargaining.⁴² According to Eurofound, there are six different governance models for regulating primarily domestic remote work which are summarised in the table below:⁴³

Table 2. Telework governance models in the EU, 2022

Clusters	Countries	Main characteristics
Corporatist-framed governance	Belgium, France and Luxembourg	State regulations apply to all employee categories, with collective bargaining influencing or supplementing these rules as needed.
Multi-employer-framed governance	Austria and the Netherlands	National laws apply to all but are less specific, giving multi-employer bargaining a significant role in governing important telework matters
Southern European cluster	Italy, Spain, Greece, Portugal and Slovenia	After the pandemic formal regulations, with collective bargaining playing a significant role, notably in Italy and Spain
Voluntary associational governance (Scandinavian cluster)	Denmark , Finland, Norway, Sweden	Limited legislation governing remote work, with most regulations relying on informal and individual trust-based agreements
Market-oriented governance	Cyprus and Ireland	No specific legislation, remote work is regulated through individual agreements between employees and their employers
State-centered governance (Eastern European cluster)	Bulgaria, Czechia, Lithuania, Croatia, Estonia, Hungary, Latvia, Malta, Slovakia, Poland and Romania	Highly centralised management system characterised by state-enforced regulation with specific objectives

Data source: Eurofound, Telework in the EU: Regulatory frameworks and recent updates, 2022

⁴¹ Visser, J., & Ramos Martin, N. (2008). Expert report on the implementation of the social partner's Framework Agreement on Telework

⁴² Eurofound (2022), Telework in the EU: Regulatory frameworks and recent updates, Publications Office of the European Union, Luxembourg

⁴³ *ibid*

Germany can be considered to have a unique governance structure for remote work, primarily relying on work councils (*Betriebsräte*) which can co-determine aspects related to remote work with stakeholders at different levels (enterprises, trade unions, and so forth), leaving only a marginal role for statutory law, collective bargaining, or voluntary agreements.

These regulatory models can exert an important influence in the employment relations between companies and workers.⁴⁴ For instance, they may affect management practices, imposing hurdles or facilitating individual negotiations in the implementation of flexible work modalities. They can also impact human resources and compliance, resulting in additional legal requirements to be introduced when stipulating contracts or further health and safety provisions and potential liabilities to be considered when allowing work from alternative locations. The compliance burden placed on companies to adhere to these regulations may necessitate investments in monitoring, reporting, and tax compliance, impacting resource allocation and risk management for employers.

Cross-border remote work presents specific challenges for Member States, particularly for the coordination of taxation and social security contributions of employers and employees alike. Cross-border employment arrangements introduce intricate tax considerations, often leading employees to face taxation in multiple countries. These tax challenges can affect an employee's take-home income and require them to navigate through a complicated web of tax rules. Employers, too, must grapple with complex tax compliance requirements when hiring tele-working individuals across borders, potentially impacting their operational expenses.

The following sections examine the fiscal aspects of remote work modalities, which are considered important by both employees and employers engaged in cross-border work modalities within the European Union. Point of departure is in the applicable regulations for cross-border (in-person) workers, from where the taxation implications for cross-border remote workers will be explored.

FISCAL IMPLICATIONS OF CROSS-BORDER REMOTE WORK FOR EMPLOYEES

TAXATION

Due to the absence of a harmonised tax framework for cross-border workers, the fiscal liabilities of employees are governed by bilateral agreements between Member States. Referred to as double taxation treaties (DTTs), these agreements generally aim at avoiding that the employment income of a single taxpayer is taxed in both the country of residence and that of employment by allocating taxing rights between signatories.⁴⁵ With respect to cross-border workers, specific provisions are put in place for the allocation of taxing rights to be either exclusive competence of the residence state, of the employment state, or to be shared between the two countries. Exclusive taxation implies that one of the two parties in the agreement renounces its claim over the tax revenue on the income generated by a cross border worker, and in the EU employment income is principally taxed in the state of employment.⁴⁶ Bilateral tax

⁴⁴ *ibid*

⁴⁵ Uckmar, V. (2012) 'Double Taxation Conventions' in Andrea Amatucci (eds) *International tax law* (2nd edn, Kluwer Law International 2012)

⁴⁶ *IusLaboris* (2022) *Frontier workers and telework in the EU: new challenges ahead*, 16 September. Available at: <https://iuslaboris.com/insights/frontier-workers-and-telework-in-the-eu-new-challenges-ahead/>

treaties rely on common definitions of cross-border workers, however, treaties presenting explicit descriptions of who falls into this category are a minority. In their absence, interpretation led by domestic laws prevail, leading to potential misalignments in interpretation and conflicts over taxing rights.

Not all EU countries have established agreements with the other Member States, leading to grey areas where uncertainty over income taxation limits European integration and freedom of movement, particularly with respect to labour mobility. For instance, since 2019, Finland and Portugal do not have a valid double taxation treaty.⁴⁷ In this context, employees of a Finnish or Portuguese company who wish to relocate to either country while keeping their current employment would likely face double taxation. On the other hand, Scandinavian countries participate in the 'Nordic Tax Convention', a shared multiparty framework to address double taxation across countries in the Nordic region. The Convention, presented in further detail in the box below, is the only example of multilateral tax agreement in the EU and addresses the issue of double taxation across the Region.

The Nordic Tax Convention

The Nordic Convention on Income and Capital signed by Denmark, the Faeroe Islands, Finland, Iceland, Norway, and Sweden is the only example of a multilateral tax treaty in the European Union. The current treaty which entered into force the 1st of January 1998, builds upon a long history of cooperation in the region, with the first agreement on administrative cooperation on tax matters stipulated in 1972. The treaty covers taxation of income and capital with the objective of strengthening tax cooperation and avoiding double-taxation to make the region an attractive place to live. Article 15 of the Convention prescribes that income is subject to taxation in the country of employment, with the following exceptions:

- If the recipient spends a total of 183 days or less in the other country during the twelve-month period starting in the relevant tax year.
- When the income is paid by an employer who is not a resident of the other country.
- If the income is not associated with a permanent establishment or a fixed base that the employer has in the other country.⁴⁸
- Unless the employment situation involves the hiring out of employees.

In cases where all the conditions are met, the income is not subject to taxation in the residence country. Guidelines and automatic exchange of information are implemented to reduce cross-border bureaucratic hurdles in a multilateral framework through 'NT forms', namely tax declaration forms submitted by employers and employees to the relevant national tax authorities and used to coordinate tax withholdings in transnational circumstances. However, the Convention foresees the implementation of bilateral agreements between the contracting countries to regulate specific circumstances. Indeed, particular exceptions to the regulation's provisions apply when dealing with the income taxation of cross-border commuters, with special agreements in place between Norway and Sweden, Norway and Finland, Finland and Sweden, Denmark and Sweden, among others.

⁴⁷ Finland (2023), Vero Skatt (Finnish Tax Administration), Tax Treaties

⁴⁸ The OECD defines a permanent establishment as a "place of business through which the business of [that] enterprise is wholly or partly carried on". The concept of permanent establishment is explored further in the following sections.

Digitalisation and evolving labour dynamics are also impacting the efficacy of bilateral agreements as the ability to work from anywhere with an internet connection has opened new opportunities for workers to seek employment in foreign countries **without the need for physical relocation**. However, employees working remotely from another Member State currently face ambiguity with regard to their legal status.⁴⁹ In bilateral agreements, definitions of cross-border workers (when present) place employees in this category if they fulfil either a temporal requirement (commuting back and forth every day between their state of residence and their state of employment) and/or a geographical requirement (living in a specific cross-border region and conducting work in that same area).⁵⁰ Lack of daily commute may lead cross-border workers to fall outside of the traditional definition of a cross-border (in-person) worker. Further, working within the residence country may trigger tax liability on the employment income generated during the days spent in the latter, with potential compliance implications for both the employer and the worker.⁵¹ During the pandemic, the declaration of a 'force majeure' (an exceptional supervening event) was declared, preventing frontier cross-border workers to be liable for any change that could have occurred in terms of applicable tax law.⁵²

For **self-employed individuals**, the tax framework for cross-border remote work is characterised by relative simplicity. In instances where such individuals engage in professional activities for an employer situated in a different EU Member State, the standard practice is to consider them as tax residents of their state of residence, rendering them subject to the domestic taxation regulations.⁵³

SOCIAL SECURITY

Social security contributions are not dealt with within DTTs given that such contributions are not regarded as taxes.⁵⁴ With regards to social security, the imposition of contribution duties in multiple Member States is explicitly prohibited by both the Treaty on the Functioning of the European Union (TFEU)⁵⁵ and Regulation (EC) No 883/2004.⁵⁶ Regulation (EC) No. 883/2004, along with its implementing counterpart, Regulation (EC) No. 987/2009,⁵⁷ serves as the bedrock for coordinating social security systems across EU Member States. These regulations encompass various aspects of social security, including insurance, pensions, medical assistance, and unemployment benefits, among others.

Unlike bilateral tax treaties, there are no specific provisions addressing the situation of cross-border workers, thus making the general 'lex loci laboris' principle apply.⁵⁸ According to this principle of EU social

⁴⁹ Grzegorzczuk, et al. (2022), 'Cross-border telework in the EU: fab or fad?', Bruegel, Brussels

⁵⁰ Niesten, H. (2023) Frontier Workers' Tax and Social Security Status in Europe – Optimizing the Legal Status in a Changing Landscape. In: International Tax Studies (ITAXS). - Amsterdam. - Vol. 5 (2022), no. 10 ; 32 p., Available at SSRN: <https://ssrn.com/abstract=4380311>

⁵¹ IusLaboris (2022) Frontier workers and telework in the EU: new challenges ahead. 16 September. Available at: <https://iuslaboris.com/insights/frontier-workers-and-telework-in-the-eu-new-challenges-ahead/>

⁵² European Agency for Safety and Health at Work, Sanz de Miguel, P., Caprile, M., Munar, L., (2021) Regulating telework in a post-COVID-19 Europe, Publications Office. Available at: <https://data.europa.eu/doi/10.2802/125499>

⁵³ European Labour Authority (2021) Cross-border teleworking during the COVID-19 pandemic.

⁵⁴ Niesten, H. (2023) Frontier Workers' Tax and Social Security Status in Europe – Optimizing the Legal Status in a Changing Landscape. In: International Tax Studies (ITAXS). - Amsterdam. - Vol. 5 (2022), no. 10 ; 32 p., Available at SSRN: <https://ssrn.com/abstract=4380311>

⁵⁵ European Union (2012), *Consolidated version of the Treaty on the Functioning of the European Union*, 26 October 2012, OJ L 326/47-326/390]

⁵⁶ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166/1.

⁵⁷ Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [2009] OJ L 284

⁵⁸ The latin term 'lex loci laboris' translates to 'the law of the place of work'. Here, it indicates that a transnational worker's social security contributions are due in the country of employment. For further details please see European Commission (1996) Green Paper: the obstacles to transnational mobility

security law, a person employed in the territory of a Member State is subject to the legislation of that State. Consequently, as a rule, the social contributions of cross-border workers are due in the state of the employer.

Proclamation of the Nordic Convention of 12 June 2012 on social security with associated administrative agreement

The Nordic Convention on Social Security builds upon the EU social security regulations and represents a significant regional policy initiative that enhances social security rights for residents across Nordic countries, regardless of their nationality. This agreement facilitates the transfer of social security entitlements earned in one Nordic country to another, extending its coverage to include UN's quota refugees and stateless persons residing in the region. The Convention introduces specialised provisions for resuming social benefits and transferring accrued rights when individuals relocate within the Nordic region. Notably, subject to specific eligibility criteria, it allows for the redemption of unemployment benefits in another Nordic country promoting ease of mobility for residents. This convention reflects the commitment of Nordic countries to cooperation and simplification of social security administration, ultimately benefiting their citizens.⁵⁹

However, for **cross-border remote workers**, the frequency of remote work from the residence state can affect the applicable jurisdiction. Employees who carry out remote work full-time are placed under the jurisdiction of their Member State of residence, where the performed work activities are carried out.⁶⁰ Furthermore, when evaluating cross-border remote workers' activities, the concept of *marginal activities* assumes importance, especially concerning Article 13 of Regulation (EC) No 883/2004.⁶¹ If a remote worker occasionally travels to the Member State where the employer is based solely for sporadic meetings or activities deemed marginal,⁶² their primary work location would still be considered their Member State of residence. Consequently, the social security legislation of their residence applies.

To provide further guidance in navigating cross-border remote working scenarios, on 1 July 2023, the [EU's Administrative Commission for the Coordination of Social Security System](#) reached an agreement on a framework that aims to set a clear threshold for determining the applicable social security legislation.⁶³ This framework agreement, rooted in Article 16 of Regulation (EC) No. 883/2004 on the coordination of social security systems, introduces a rule stipulating that if remote work in an employee's country of residence

⁵⁹ Proclamation of the Nordic Convention of 12 June 2012 on social security with associated administrative agreement.

⁶⁰ European Commission (2023) Employment, Social Affairs and Inclusion. Which rules apply to you. Accessed 1 October 2023. Available at: <https://ec.europa.eu/social/main.jsp?catId=851&langId=en>

⁶¹ Verschueren H. (2022) The Application of the Conflict Rules of the European Social Security Coordination to Telework During and After the COVID-19 Pandemic. *Eur J Soc Secur.* 2022 Jun;24(2):79-94. doi: 10.1177/13882627221107042. PMID: 35791425; PMCID: PMC9243967.

⁶² Marginal activities refer to those permanent activities requiring limited time and yielding limited economic returns. They encompass tasks representing less than 5% of a worker's regular working time or income. Additionally, activities falling into the category of supportive, lacking independence, or conducted from home or in conjunction with the principal job can also be indicative of marginal activities. If an individual engages in such activities in one Member State while working in another, they are not considered to be actively pursuing employment in multiple Member States.

⁶³ IusLaboris (2023) Teleworking in the EU: new Framework Agreement on the way. 30 June. Available at: <https://iuslaboris.com/insights/teleworking-in-the-eu-new-framework-agreement-on-the-way/>

constitutes less than 50 per cent of their total working time, it will not be considered when determining the applicable social security legislation.

In cases where a worker carries out employment in more than one Member State, the social security liability is contingent upon the proportion of working time spent in the state of residence. Specifically, if an employee works in their state of residence for at least 25 per cent of their total working time, they are deemed subject to that specific state's social security regulations. Conversely, if the time spent in the state of residence is below the 25 per cent threshold, the social security obligations shift to the Member State where the employer's registered office is situated. Thus, if cross-border remote workers perform less than 25 per cent of their work duties in the country in which the employer is situated, the social security regime transitions to that of the state of residence.

FISCAL IMPLICATIONS OF CROSS-BORDER REMOTE WORK FOR EMPLOYERS

TAXATION

One of the main concerns for employers considering hiring a remote worker based in another EU Member State is the risk of **permanent establishment (PE)** in the worker's residence state. According to the OECD, a permanent establishment identifies a, "*place of business through which the business of [that] enterprise is wholly or partly carried on*".⁶⁴ If it is determined that a permanent establishment exists, the company may become liable to the other foreign corporate tax regime on the income generated by the employee abroad.

The adoption of remote work in a cross-border environment increased the concerns related to home office and unexpected tax liabilities. Employees' home offices may inadvertently trigger a PE, however, the current case law emphasises relevant criteria for assessing whether working from home from another EU country qualifies as PE. To be considered as a fixed place of business, the employee's home office must be considered to be at the disposal of the employer. To establish an employer's power of disposal, it is necessary that the home office is essential to carrying out work duties, and more generally the terms of employment. If an employee can sell their home or terminate the lease without reference to the employer, the employer lacks control over the location. However, if the employer specifies a particular address for the home office, and the employee agrees, this could imply the necessary power of disposal. In a recent case involving a managing director working partly from a home office in Denmark for personal reasons, the Danish tax authorities ruled that a PE was not triggered. Their decision was based on the absence of a fixed place of business at the employer's disposal in Denmark and the lack of control over the director's home office.⁶⁵

Apart from the home office issue, employees may trigger a PE through an "**agency permanent establishment**" (agency PE). This occurs when employees habitually engage in decision-making activities, such as negotiating and concluding sales contracts in another country. Additionally, ongoing service delivery by an employee with the authority to sign binding contracts may cause an agency PE. In the previously

⁶⁴ OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/e2e972ee-en>.

⁶⁵ Skatteforvaltningen (Danish tax authorities), "Ikke fast driftssted ved direktørs arbejde fra hjemmet i Danmark," SKM2022.406.SR, 29 August 2022. Available at: <https://info.skat.dk/data.aspx?oid=2353490#:~:text=Endvidere%20lagde%20skatter%C3%A5det%20v%C3%A6gt%20p%C3%A5,prim%C3%A6rt%20blive%20varetaget%20i%20Schweiz&text=Skatter%C3%A5det%20begr%C3%A6ftede%20at%20medarbejder%20A.driftssted%20i%20Danmark%20for%20sp%C3%B8rger>.

mentioned Danish case, the tax authorities justified their ruling also by determining that the managing director would not be involved in sales activities in Denmark, and work in Denmark would be sporadic. When determining the existence of a PE, activities of a preparatory or auxiliary nature (those necessary for business operations but not constituting the core activities) are typically disregarded.

Employers' reporting requirements in the Nordic region⁶⁶

The Nordic region exhibits a diversity of national regulations regarding cross-border employment, leading to differing employer obligations. While Denmark adopts a more relaxed approach, requiring employer registration only when a permanent establishment is involved, Sweden and Norway impose stricter demands on foreign companies employing persons from their countries, mandating registration when hiring residents working from home offices even when a PE is not established. Additionally, Finland introduces a monthly reporting obligation for foreign employers. These inconsistencies pose significant barriers to establishing a flexible virtual workplace, disproportionately affecting smaller companies that struggle with navigating these complex legal requirements. Furthermore, these disparities hinder the creation of a cohesive labour market, as Nordic employers may choose to avoid hiring individuals residing in other Nordic countries. The need for greater regulatory harmonisation, highlights the potential for achieving a more unified and streamlined remote work labour market in the Nordic region.

Case Scenarios

1. Consider an individual residing in **Sweden** who works for a **Danish company** located in **Denmark**. This employee carries out work both in Sweden, remotely from their residence, and in Denmark for their Danish employer. This situation demands that the Danish employer, alongside its obligations in Denmark, registers as employer in Sweden, withholding taxes and reporting wage income for work performed in Sweden to meet the country's specific requirements.⁶⁷
2. Now consider the opposite scenario, namely an individual residing in **Denmark** working for a **Swedish company** in **Sweden**. As in the previous case, the employee carries out work both from their residence state (Denmark) and at the employer's premises (in Sweden). When working from home office or elsewhere in Denmark, the salary for that part of the work shall only be taxed in Denmark. The Swedish employer needs to distinguish between work in Sweden and work in Denmark when reporting income and withholding taxes, regardless of the frequency of home officing.⁶⁸

Amid the pandemic, the 'force majeure' principle was extended to encompass the evaluation of the risk associated with establishing a permanent presence. As per guidance from the OECD, alterations in circumstances and any factors that led to corporate tax liabilities during the pandemic should not be factored into the assessment of potential new permanent establishments.⁶⁹

⁶⁶ Nordic Council of Ministers (2023) Work across the north. Proposal for simplification of the Nordic tax rules with a focus on increased mobility. Available at <https://pub.norden.org/nord2023-024/index.html>

⁶⁷ Nordisk eTax - Information about taxation in the Nordic countries (accessed 27 September 2023)

⁶⁸ Nordisk eTax - Information about taxation in the Nordic countries (accessed 27 September 2023)

⁶⁹ OECD (2020) OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis

SOCIAL SECURITY

Even when two Member States have a Double Taxation Treaty (DTT) in place, employers may still encounter payroll withholding obligations, leading to additional tax compliance responsibilities. This situation arises when an employee falls under the social security legislation of their country of residence, which may differ from the employer's designated duty station. In such cases, the employer may be obliged to register with foreign tax authorities and establish a local payroll system for their remote workers (a shadow payroll), which involves a financial and administrative procedure for managing tax and payroll obligations for employees working in countries other than the company's primary duty station.⁷⁰ The specific requirements for compliance may vary across EU Member States, creating a challenging landscape for employers to navigate.

This might lead to employers considering alternative solutions, such as hiring workers on freelance contracts or entering arrangements with local businesses to place employees on a local payroll temporarily. However, each of these options demands substantial resources and entail significant risks. Non-compliance with tax requirements can lead to penalties, making it imperative for employers to carefully consider their approach to international employment arrangements.

MOBILITY OF NON-EU NATIONALS

Resident third country nationals (TCNs) enjoy limited mobility and transnational working rights across the EU. Generally, they are entitled only to freedom of movement in the Schengen area for up to 90 days in a 180-day period.⁷¹ The EU legal migration framework currently adopts an issue-specific and category-based approach that limits the potential of labour migration to contribute to tackling transnational labour market shortages.⁷² Currently, the legal migration acquis is composed of the following seven Directives:

1. Directive 2003/86/EC Family reunification (FRD)
2. Directive 2003/109/EC Long-Term Residents (LTR)
3. DIRECTIVE (EU) 2021/1883 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC (BCD)
4. Directive 2011/98/EU Directive on a Single Application/Permit and third-country workers' equal treatment - the Single Permit (SPD)
5. Directive 2014/36/EU on Seasonal workers (SWD)
6. Directive 2014/66/EU on Intra-corporate transfers (ICT)
7. Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil-exchange schemes or educational projects and au pairing (recast of Directives 2004/114/EC on students and 2005/71/EC on researchers) Students and Researchers Directive (S&RD).

⁷⁰ EY (2023) Cross-border remote working - Employment law and tax considerations. 17 July. Available at: https://www.ey.com/en_ie/tax-alerts/cross-border-remote-working-employment-law-and-tax-considerations

⁷¹ Goldner Lang, I. (2018). Intra-EU Mobility of EU Citizens and Third-Country Nationals: Where EU Free Movement and Migration Policies Intersect or Disconnect?. SSRN Electronic Journal. 10.2139/ssrn.3545929.

⁷² European Commission (2018) Legal Migration Fitness Check Final Evaluation Report

While the Family Reunification⁷³ and Long-Term Residents Directives⁷⁴ primarily address the rights of TCNs already residing in the EU, the remaining legislations are focused on the procedures and prerequisites for various categories of first-comers immigrant workers. The Single Permit Directive⁷⁵ introduces a streamlined application process for TCNs seeking employment and residency in the EU, ensuring equal treatment between TCNs and EU nationals in the workforce. Conversely, the EU Blue Card Directive,⁷⁶ Intra-corporate Transfers Directive,⁷⁷ and Seasonal Workers Directive⁷⁸ are targeted at specific aspects of migrant employment. They respectively cater to highly skilled job opportunities, employment within multinational corporations, and temporary work in lower-skilled positions. The Students and Researchers Directive⁷⁹ outlines the entry and stay requirements for non-EU researchers, ensuring a clear framework for their presence in the EU. In May 2021, amendments to the Long Term Residents Directive were approved to enhance mobility, standardise, and simplify rules.⁸⁰ The new legislation aims at harmonising the EU and national long-term residence permits by making relevant information more accessible, enhancing protection of rights of long-term residents and harmonising application procedures. It introduces the possibility to accumulate legal residence periods in different Member States to obtain long-term residence status. Further, it strengthens migrant rights by allowing intra-EU mobility (and work) and facilitates return to origin countries without losing rights.

Across Member States, the Directives have been transposed into national law and have aimed at setting some transnational requirements and **increasing the attractiveness of the EU as a destination for migrant workers**. For instance, in 2022, German authorities granted a total of 39,365 EU Blue Cards, with 53 per cent going to individuals who had not previously held a German residence permit,⁸¹ indicating them as first-time immigrants. This marked a significant rise from the initial issuance of 25,000 Blue Cards in 2021.⁸² However, given their opt-outs in matters of the 'Area of Freedom, Security and Justice' (AFSJ), regulations in the legal migration acquis were not transposed into national law in Denmark and Ireland which have to negotiate separate agreements to cooperate with the EU on policy issues falling into this area.⁸³

TCNs holding a EU long-term residence permit are entitled to reside in a second Member State for a period not exceeding three months. This extended stay can be for various reasons, including engaging in economic activities, pursuing educational endeavours, or any other lawful purpose. While employers may not need to apply for a new work permit for this category of migrants, TCNs in such a situation need to

⁷³ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

⁷⁴ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

⁷⁵ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

⁷⁶ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

⁷⁷ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

⁷⁸ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

⁷⁹ DIRECTIVE (EU) 2016/801 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

⁸⁰ European Parliament, Legislative Train Schedule, Revision of Directive 2003/109/EC on long-term residents (REFIT) In "Promoting the European Way of Life", 20 September 2023.

⁸¹ Graf, J. (2023): Monitoring zur Bildungs- und Erwerbsmigration: Erteilung von Aufenthaltstiteln an Drittstaatsangehörige. Jahresbericht 2022. Berichtserien zu Migration und Integration, Reihe 1. Nürnberg: Forschungszentrum Migration, Integration und Asyl des Bundesamtes für Migration und Flüchtlinge. <https://doi.org/10.48570/bamf.fz.bericht.r1.d.2023.mobemijb.2022.1.0>

⁸² Federal Office for Migration and Refugees (2023), Figures on the EU Blue Card. Available at: <https://www.bamf.de/EN/Themen/Statistik/BlaueKarteEU/blauekarteeu-node.html>

⁸³ Wiesbrock, A. (2010). "Chapter 6. Corresponding Provisions On Legal Migration In Member States With An Opt-Out". In Legal Migration to the European Union. Leiden, The Netherlands: Brill | Nijhoff. <https://doi.org/10.1163/ej.9789004184077.i-80936>

apply for a residence permit also in the destination Member State. The application procedures are more favourable than compared to first-comers, however, with regards to the necessary requirements great discretion across national legislations. Highly qualified workers holding an EU Blue Card are allowed to move to a second EU country only after 12 months of legal residence in the first Member State and need to apply for a new EU Blue Card in the destination Member State.⁸⁴ Researchers enjoy favourable short-term mobility, indeed, if the research period in the second Member State is limited to six months, that can be carried out on the basis of the conditions that granted work and residence to the first EU country. However, if the work period exceeds six months the hosting country may require a new procedure to allow the researcher's work to continue.

Third-country nationals in Denmark and Sweden

TCNs holding a residence permit and work permit in Sweden or Denmark cannot seek employment or relocate for employment purposes in the other country. Exceptions exist for specific cases, notably affecting non-EU citizens associated with the European Spallation Source (ESS) research centre in Lund, Sweden. These individuals can reside in Denmark while working in Sweden under certain conditions. Furthermore, the Danish Ministry of Immigration and Integration outlines that third-country nationals residing in a country other than Denmark, such as Sweden, can obtain a work permit for Denmark as cross-border migrants, provided they meet the criteria stipulated in the Danish Aliens Act (Udlændingeloven) within the framework of existing Danish business regulations.⁸⁵

EU regulations on the Internal Market can also affect the mobility of workers. Under Directives 96/71 and 2014/67 and 2018/1957, TCNs legally employed by a service provider in an EU country can carry out temporary work assignments in a second Member State without any additional administrative requirement to be met. Referred to as 'posted workers', non-EU workers that fall into this category are exempt from obtaining a new work permit. A 2014 ruling of the European Court of Justice (ECJ) extended similar working rights also to non-EU nationals not working directly for their employer in another EU country.⁸⁶

CONCLUSION

As described above, remote work modalities may contribute to employee well-being through enhanced work-life balance, improved retention rates and productivity. Remote work modalities do not constitute a temporary phenomenon, but an enduring transformation and attractive working modality expected by the highly skilled. Even so, there is a need to navigate also potentially negative effects caused by boundary-blurring, lack of workplace networks etc.. The diversity in national policies concerning domestic but also cross-border remote work can make it difficult for employees and employers alike to navigate the complex web of regulations. This is particularly the case for cross-border remote work of TCNs.

⁸⁴ Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC

⁸⁵ Nordic Cooperation (2021) Obligation for foreign employers to make tax deductions on compensation for work that employees perform in Sweden. Available at: <https://www.norden.org/sv/border-database/skyldighet-utlandska-arbetsgivare-att-gora-skatteavdrag-pa-ersattning-arbete-som>

⁸⁶ Fragomen (2014) ECJ Ruling Expands Cross-Border Work Options for Third-Country National Workers. 6 November. Available at: <https://www.fragomen.com/insights/ecj-ruling-expands-cross-border-work-options-for-third-country-national-workers.html>

From the current landscape it emerges that non-EU nationals cross-border workers are not covered by any EU legislation. National legislations apply when legally resident TCNs seek employment in a different Member State from that of their residence, consequently they are often required to apply for a work permit also in the Member State of employment.

For instance, a third-country national living in Sweden who wishes to work in Denmark (either remotely for a Danish employer or in person) must hold a valid job offer, apply, and receive a work permit before being allowed to perform any employment activity. Certain EU Member States, including Belgium, France, Germany, Italy, Luxembourg, and the Netherlands, have established their own regulations and procedures, and when it comes to residency, they may consider the person's residence status in another Member State as sufficient to meet the requirements.⁸⁷ However, they still need to meet employment conditions, have valid work permits and when necessary, be subject to procedural requirements such as labour market tests.

It follows that with respect to the transnational remote work of third country-nationals, immigration requirements aggravate the already existing difficulties related to integrating teleworking modalities as well as the previously mentioned considerations that employers and employees need to take into account if opting for teleworking arrangements cross borders. Further to this, it is apparent that there are limited data available on the topic of cross-border work, when it comes to remote working arrangements and opportunities, thus representing a less explored field of study.

⁸⁷ European migration Network (2013) Intra-EU Mobility of third-country nationals