

Public Hearing

# Taxation of Cross-border Teleworkers

## Possible solutions

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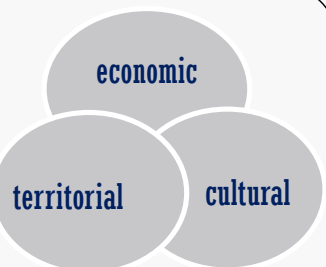


**Sovereignty** can be defined as the power to build and maintain the State supremacy and uniqueness in the political field



The international system is based on the principle of hierarchy within each State and on the principle of independence among States. International events do not have a direct impact on the internal sphere of the States as their outcomes are mediated by the States themselves

**Sovereignty has multiple dimensions:**



National States are also **fiscal States**, as they impose taxes on their citizens.

The imposition of taxes represents an important expression of the State authority: for this reason, we talk about **tax sovereignty**

Tax sovereignty is the expression of self-determination and self-sufficiency in the exercise of a power which is crucial for the State itself

Tax sovereignty can become more formal than substantial if it is not associated with an **effective control** of the activities taking place in the State territory

Taxable income might spill out of the State borders: this happens when a company, by using **artificial structures**, produces income in one State and pays taxes in another State

This implies a crisis of tax systems that runs parallel to the decline of the sovereign national State and has an impact both at the national and at the international level

## The decline of sovereignty:

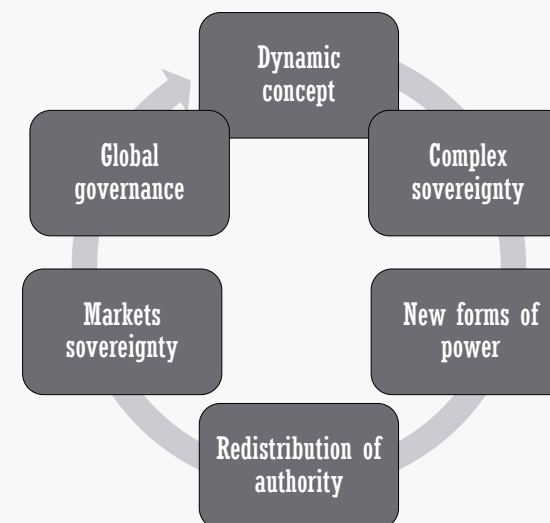
By establishing the UN, States renounced to the "*ius ad bellum*" and forwent their external sovereignty intended as "*potestas superiorem non recognoscens*"

The EU integration process also had an impact on sovereignty: States are no more sovereign "*uti singuli*" but "*uti socii*"

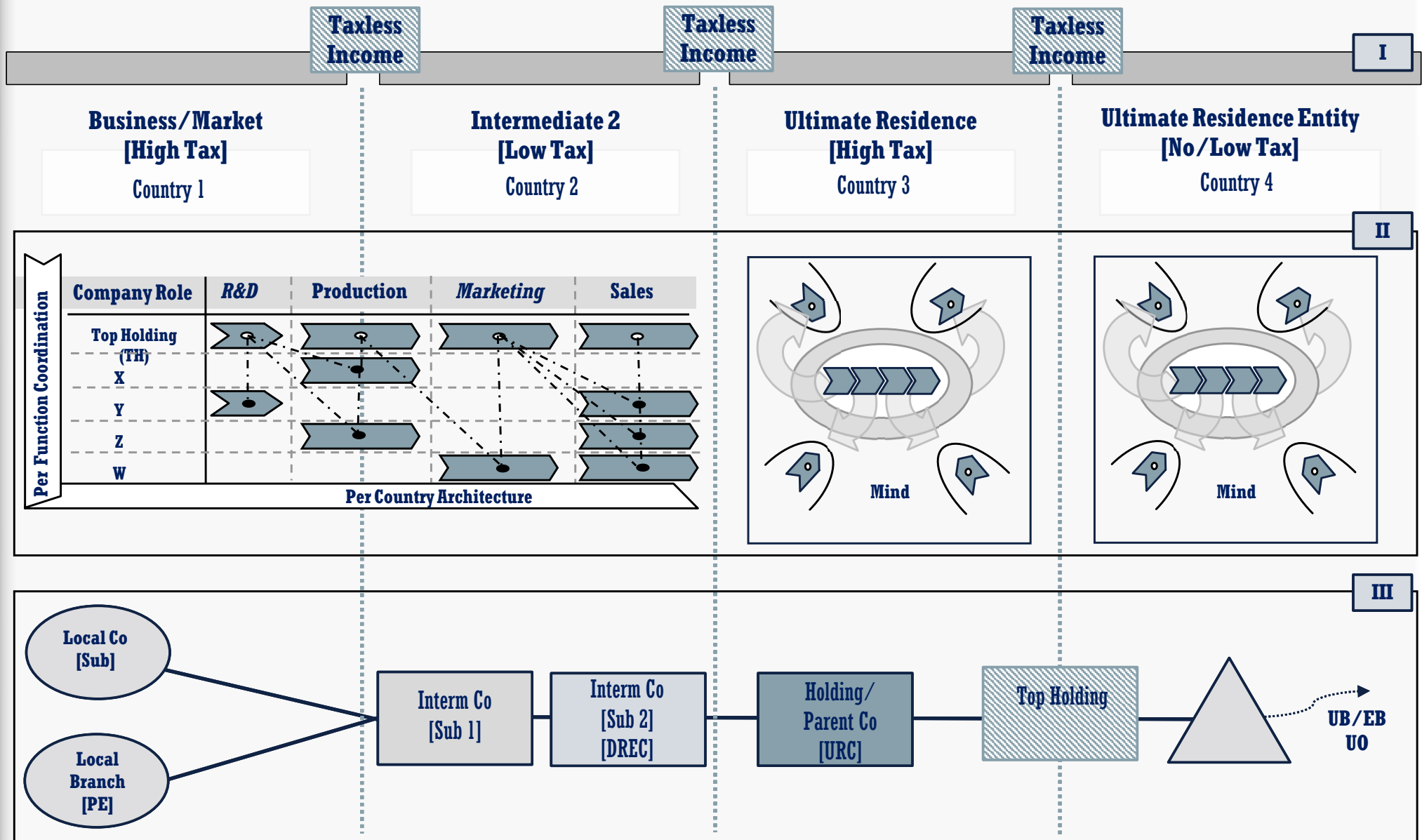
The resulting new sovereignty is a dynamic concept

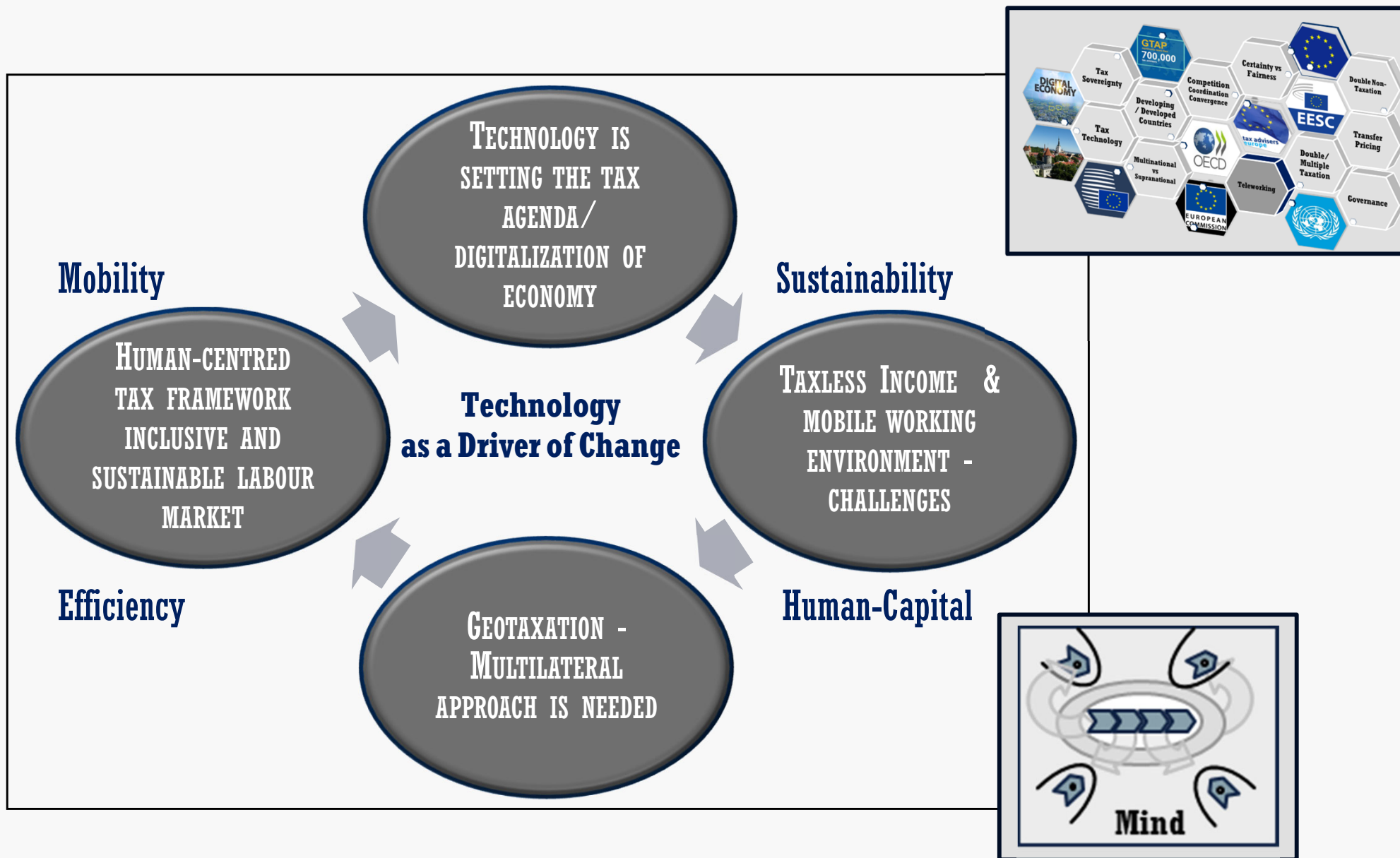
Sovereignty can be modulated, transferred, shared. On the supranational level, single States, legitimated by their citizens' support, may become global electors in a system of global governance

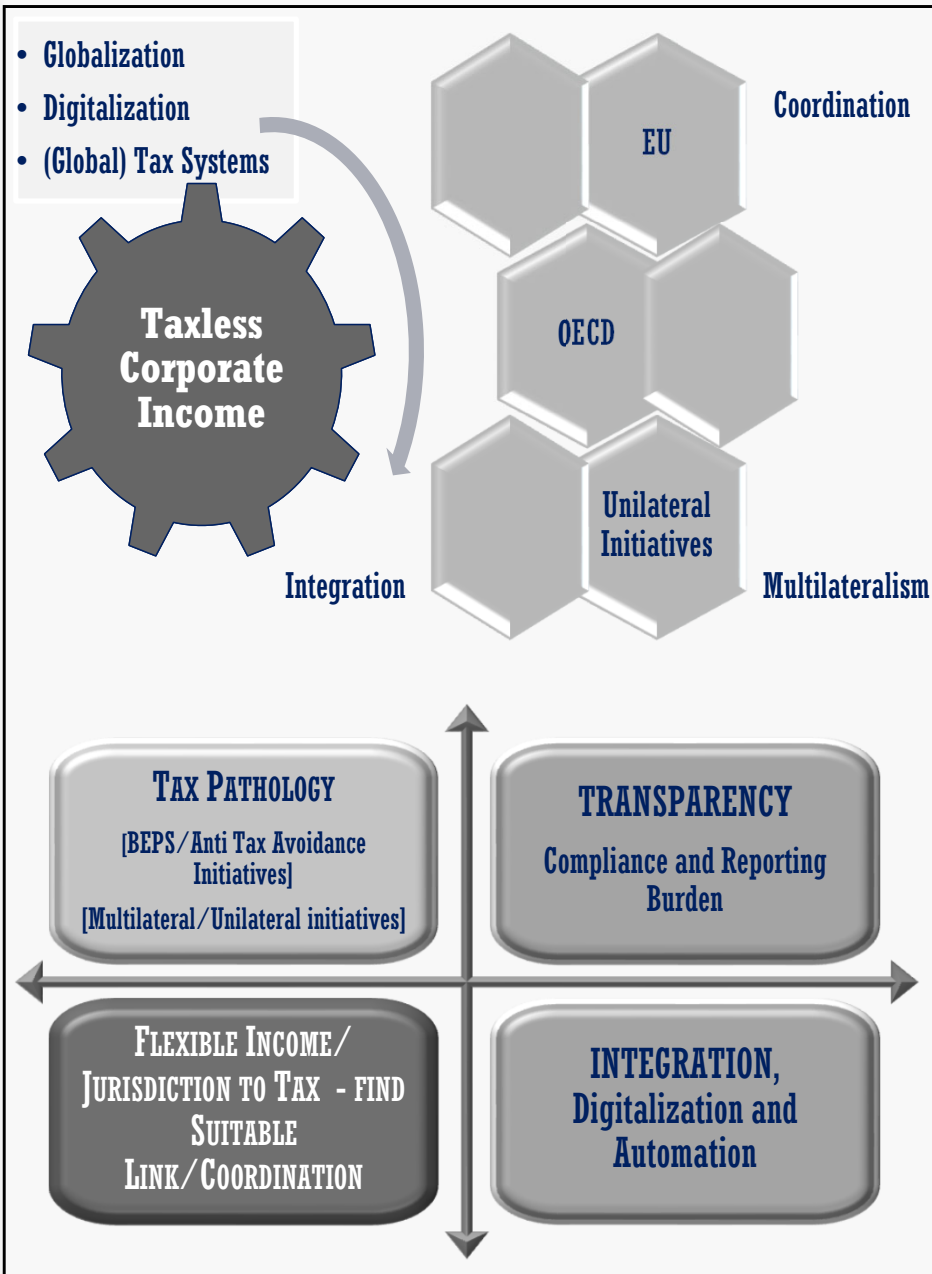
## The new sovereignty:



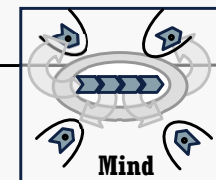
# Global Tax Puzzle - Post-BEPS Global Tax Planning







## Transnational Corporations - Critical Issues



Teleworking

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## Circumstances and line of inquiry

Employer Residence

FAR Analysis  
(proactive/ex ante)

Employee Residence

Multitest  
(defensive/ex post)

Qualification of income

Quantification of income

**Increased mobility of the work force pose challenges to taxation and social security practices and policies**

Risk of the unintended creation of

- permanent establishments (“**PE**”),
- place of effective management (“**POEM**”) or
- additional **registration** (including labour laws or social security) and **declaration obligations** in certain cases

**Administrative burden, tax risks and implications on liquidity** for many businesses

**An internationally coordinated approach is required.**



## Principles of Taxation and Consequences

### The Principle of Taxation at the Place of Activity

### Derogations to the principle in Double Taxation Conventions

- **De minimis limits**
- **Specific cross-border commuter provisions**
- **Special Agreements during Covid period (bilaterally / OECD Note)**

### Employer

- Apportionment of income in two jurisdictions
- Levying of wage tax as withholding tax in state of activity

### Employee

- Additional compliance obligations (need to declare income in 2 MS)
- Certain thresholds may no longer be fulfilled (Schumacker-criteria)
- Possible impact on overall income depending on difference in taxation in source and resident state

### Tax Administrations

- Apportionment results in assessing taxpayer in both states on largely the same issues (days spent in home office, auditing of wage tax requirements, disputes with taxpayer)

### Consequences

## Social Security Rules and Teleworking (1/2)

The EU Regulations on the **coordination of social security systems** (Regulations (EC) Nos 883/2004 and 987/2009) provide that persons are subject to the legislation of only **one Member State** at a time

For economically active persons, in principle, **the Member State in which they work is competent**

If they normally pursue an activity in two or more Member States, Article 13 stipulates that employed persons are subject to the legislation of their **Member State of residence** if they pursue a substantial part of their activity there

Article 14 of Regulation (EC) No 987/2009, as a general rule, a **share of 25 % or more of working time and/or remuneration over a period of 12 calendar months** is regarded as a substantial part of the activity

**Result:** currently there is a cap for teleworking of **25 %** to avoid repercussions in the field of social security

## Social Security Rules and Teleworking: New Framework Agreement (2/2)

**Framework Agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border telework**

27 EU MSs, Norway, Iceland, Liechtenstein, Switzerland, U.K. invited to the agreement that will allow employers/employees to carry on social security coverage in the country of the employer when an employee **works from home in another country less than 50 % of the time**

The Framework Agreement provides an option to employers and employees whereby an employee can work up to 49.9 percent of his time in the country of residence and **maintain coverage under the social security system in the country of the employer**

If employers and employees want to use the option they must apply for the **A1 certificate** in advance

**12 Signatories by 1 July 2023:**

Germany, Switzerland, Belgium, Portugal, Liechtenstein, Austria, Czech republic, Slovak republic, The Netherlands, Norway, Finland, Luxembourg

The UK has indicated that they **will not sign** this Agreement

### From Institutions:

- European Economic and Social Committee - EESC: Opinion on "Taxation of cross-border teleworkers and their employers" dated 13 July 2022, ECO/585
- BENELUX Interparliamentary Assembly: Recommendation 920/2 of 23 March 2021 for 48 days/year cross-border teleworking
- Assemblée Nationale FR: Resolution Européenne, n°819 of 9 March 2022 for 96 days/year cross-border teleworking
- Petition to the German Bundestag for an alignment of cross-border teleworking to Social Security Threshold of 55 days/year

### From the EU (to mention some):

- Platform of Good Governance in September 2021
- Annual Report of Taxation 2022
- Public Hearing Tallinn

## Cross-border Teleworking: Possible Actions to Optimize Framework

### 1. A *de-minimis* tax perimeter

- No tax repercussions for cross-border Teleworking within set limits and no apportionment of income
- Some countries implemented (number of days range from 19 – 34 days per year); not sufficient to allow 1 day/week cross-border teleworking

### 2. A *de-minimis* tax-aligned perimeter

- Social security provisions provide for a change of applicable social security system in case of 25 % or more home office,
- The proposed solution entails enabling regular cross-border teleworking for one day per week.

### 3. A One-stop-Shop

- Cross-border worker only deals with one tax administration
- In practice, imbalances could occur, which could be rectified through financial compensations between Member States.

Setting up central **one-stop-shops** in tax administrations where mobile workers and investors could find relevant and reliable tax information, directly pay taxes and obtain all the necessary certificates for their home country's tax authorities

**Facilitating cross-border tax compliance** by seeking greater alignment of tax claim and declaration forms, translating information into other EU official languages and making greater use of information technology

Encouraging Member States to **adopt special rules for frontier workers and mobile workers** that take account of the interaction of tax and social security systems in different Member States

Promoting better interaction between the different pension taxation regimes to encourage worker mobility

The number of days allowed for such remote work is often limited to some 20 days per year, we welcome **the EESC proposal to extend such limit up to 2 days per week**, without any tax consequences.

Remote &  
Virtual workers

**Issues**

- Remote and virtual working has increased significantly
- The global nature of workforces has led to an increasing number of workers performing their duties from countries different from their employment location.
- Emerging virtual assignments have given rise to a disconnect between an employee's physical location and their designated role.
- Access to healthcare

**Suggested Actions**

- Assessing the impact at the employee level regarding compliance with tax filing and payment obligations
- Assessment by employer on employer's payroll and related compliance obligations
- Clarify healthcare access under local social security and whether there are any gaps?
- Employer and employee compliance
- Process and policy related support

Global Mobility Planning

**Issues**

- Short term business travellers increased
- Non-resident directors
- There is a resurgence in international business travel and relocations taking place
- Costs are experiencing pressure due to environmental factors

**Suggested Actions**

- The structuring of cross-border work arrangements and assignments aimed to minimize costs and mitigate risks
- Check employer and employee compliance
- Assess expatriate tax concessions
- Social security planning and compliance

- Risk of race to the bottom by remote workers regimes?

- Single Market Freedoms
- Remote working pose new questions for cross-border working with relevance for all MS
- EU recommendation format?

International  
Solution

EU  
specific issues —  
why?

Policy Issues

Certainty Social  
Security and  
Labour Law

- Allocation of taxing rights
- High administrative burden
- Minimize tax litigation risk

- Social security and labour law - increased coordination needed?