

TAXATION OF CROSS-BORDER TELEWORK Employers, What Do You Need to Know?

Presentation support used during the webinar on 03.04.2025 by and for the UEL's members exclusively.

For more information on this topic, please feel free to reach your contact within our one of our members

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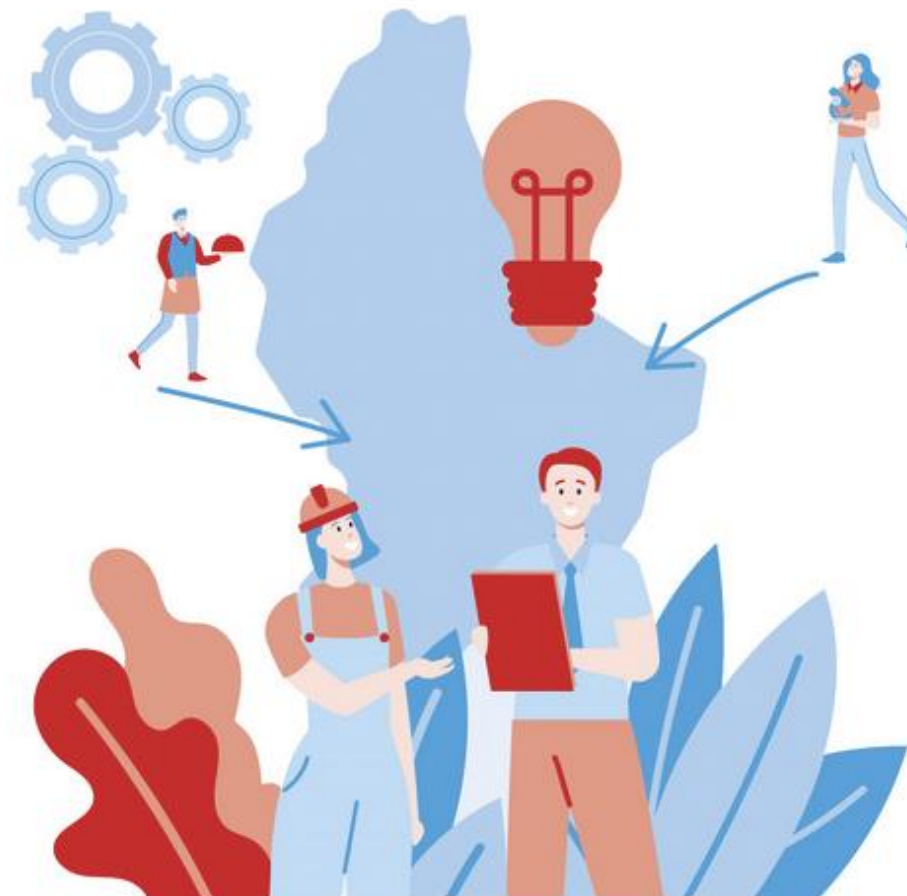
Introduction

Tolerance thresholds and taxation

Tolerance thresholds and social security

The question related to the permanent establishment

Conclusion

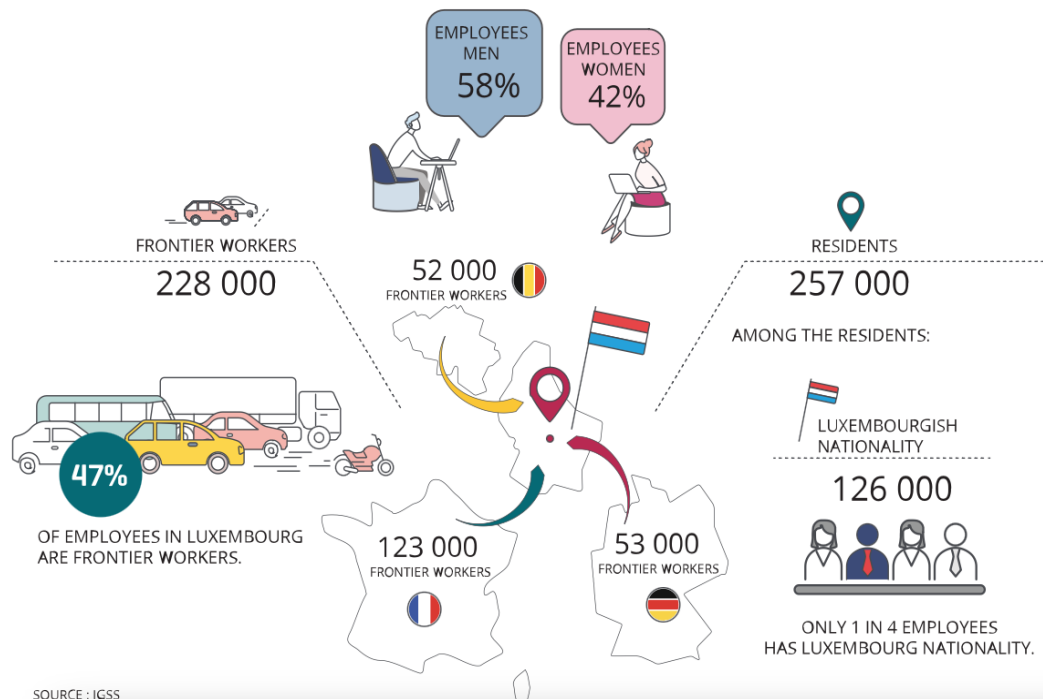


Introduction



The importance of cross-border (tele)work

In the last quarter of 2023,
485,000 employees worked in Luxembourg



« Since the end of 2023, the number of cross-border workers living in Germany and in Belgium has been declining (-0.6% and -0.5% between December 2023 and August 2024), while French cross-border employment continues to increase (+0.9%). Various elements can influence the relative attractiveness of Luxembourg for cross-border workers from different countries.

The fact that the differences between the evolution of cross-border and resident jobs are particularly marked in ICT, the financial sector and specialised, scientific et technical activities could point to a loss of relative attractiveness, especially for qualified workers whose tasks lend themselves to teleworking. Indeed, the tax quota (above which the income becomes taxable in the country of residence) restricts the teleworking of cross-border workers.

1

Tolerance thresholds and taxation



Summary of applicable rules

As a general rule, the days worked outside Luxembourg territory, including telework days, by a non-resident employee (employed in Luxembourg), are in principle, and subject to double tax treaty provisions, taxable in the country of residence of the latter.

However, this rule does not apply below a certain number of days worked outside Luxembourg (the tax « **tolerance thresholds** »).

« Tolerance thresholds » in tax matter

Based on agreements concluded by Luxembourg with each of the neighbouring countries, the days worked outside Luxembourg territory (telework or other), by a non-resident employee, remain taxable in Luxembourg as long as the **tax tolerance thresholds** are not exceeded (on an annual basis).



If the tolerance thresholds are exceeded, the fraction of remuneration related to all hours worked outside Luxembourg (telework or other) becomes taxable in the country of residence.

What are the tax tolerance thresholds?

The tax tolerance thresholds have been recently increased and harmonised between the three neighbouring countries and are currently as follows:

Belgium : The initial threshold of 24 days has been increased to 34 days as of 2022.

France : The initial threshold of 29 days has been increased to 34 days as of January 1, 2023. This change was subject to an amendment of the tax treaty signed between France and Luxembourg on November 7, 2022. This amendment was ratified by Luxembourg in June 2023 and by France in February 2025. The exchange of instruments of ratification must still take place before the text comes into force.

Germany : The initial threshold of 19 days has been increased to 34 days as of January 1, 2024.



Annual tax tolerance
thresholds of 34 days

Towards an increase of tax tolerance thresholds?






- Belgium: possible increase?
- Germany: stabilisation at 34 days?



- Towards a possible increase up to 40%?
- New addendum under negotiation

How to compute the tolerance thresholds?

	 GERMANY	 BELGIUM	 FRANCE
Employee working in part-time	No pro-rata basis of the threshold	A pro-rata basis of the threshold depending on the working time; Rounded up to the nearest unit (Belgian approach)	A pro-rata basis of the threshold depending on the working time; Rounded down to the nearest unit
Employment activity part of the year	No pro-rata basis of the threshold	Pro-rata basis: any month started counts as a full month (Belgian approach)	A pro-rata basis of the threshold on a temporis basis; Rounded down to the nearest unit
Fraction of days performed at home (or outside Luxembourg)	Counts as 1 occurrence Except if the activity does not exceed 30 minutes on the day	Counts as 1 occurrence Except if the working time is marginal (i.e, checking the professional mailbox before starting the activity)	Counts as 1 occurrence
Day on training, business trip, conference,...	Counts as 1 occurrence	Counts as 1 occurrence	Counts as 1 occurrence
On-call duty/permanence performed at home	Counts as 1 occurrence The German authorities consider that an on-call duty period covering 2 days counts for 1 occurrence	Counts as 1 occurrence	No precision

* Circular and precisions communicated by the ACD for each neighbouring countries :
Germany: <https://impotsdirects.public.lu/dam-assets/fr/legislation/circulaires/circulaire-lg-conv-di-71-du-18-mars-2024.pdf>
Belgium: <https://impotsdirects.public.lu/dam-assets/fr/conventions/conv/seuil-de-tolerance-b-01032024.pdf>
France: <https://impotsdirects.public.lu/dam-assets/fr/conventions/conv/seuil-de-tolerance-f-26082022.pdf>

Example

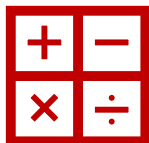


Sarah is **Belgian** resident and started her professional activity with a Luxembourg employer on February 1, 2025. She was not employed in Luxembourg in January 2025.

In 2025, as part of her professional activity, Sarah will perform :

- ✓ **5 days** in Italy for a training;
- ✓ **15 days** in Portugal;
- ✓ **13 days** of occasional home working for personal convenience and upon request made to her employer.

This leads to a total of **33 days worked outside Luxembourg** in 2025.



Will Sarah exceed the tolerance tax threshold in 2025?

Since Sarah started her professional activity in course of the year, the applicable tolerance tax threshold for 2025 in her situation is calculated as follows:

$34 \text{ days} / 12 \text{ months} \times 11 \text{ months} = \mathbf{31,16 \text{ days}}$

Sarah being Belgium resident, she benefits from a **tolerance tax threshold of 32 days for 2025**.

Sarah will work 33 days outside of Luxembourg : $5+15+13 = \mathbf{33 \text{ days}} > 32 \text{ days}$.

Sarah will therefore **exceed** the tolerance tax threshold in 2025. This implies that the fraction of remuneration related to these 33 days becomes taxable in Belgium (Sarah's country of residence) and exempt from tax in Luxembourg.

What are your obligations in Luxembourg as an employer?

As an employer, you must ensure a correct withholding tax on salaries and proper establishment of pay slips and annual salary statements.

If the thresholds are exceeded, you must regularise the excess of withholding tax levied and reflect these adjustments in the pay slips as well as in the annual salary certificate of the concerned employees.

You must therefore keep:

- ☒ A work calendar (or any other internal tool) enabling to track and count the days worked outside Luxembourg by your non resident employees;
- ☒ Any useful justification in case of payroll audit.

What are your obligations abroad as an employer?

As an employer, you must comply with any administrative and reporting obligations in the country of residence of the concerned employees.

This is notably the case in France, with the mechanism of the «**acompte contemporain**».



Special case of reporting obligations in France for employers



In case one of your French resident employees exceeds the tolerance threshold, you are required (since 2023), as an employer, to :

- ☒ Annually declare to the French tax authorities the fraction of remuneration taxable in France; and
- ☒ Compute this fraction of remuneration in accordance with the applicable French tax rules.

The related French income tax will be directly levied by the French tax authority on the employee's bank account (mechanism of the «acompte contemporain»).

2

Tolerance thresholds and social security



Agenda



Principle

Application of Article 13 of the Regulation (No. 883/2004)

Application of Article 16 of the Regulation (No. 883/2004)



Derogation – Framework agreement on telework

Scope of the framework agreement on telework

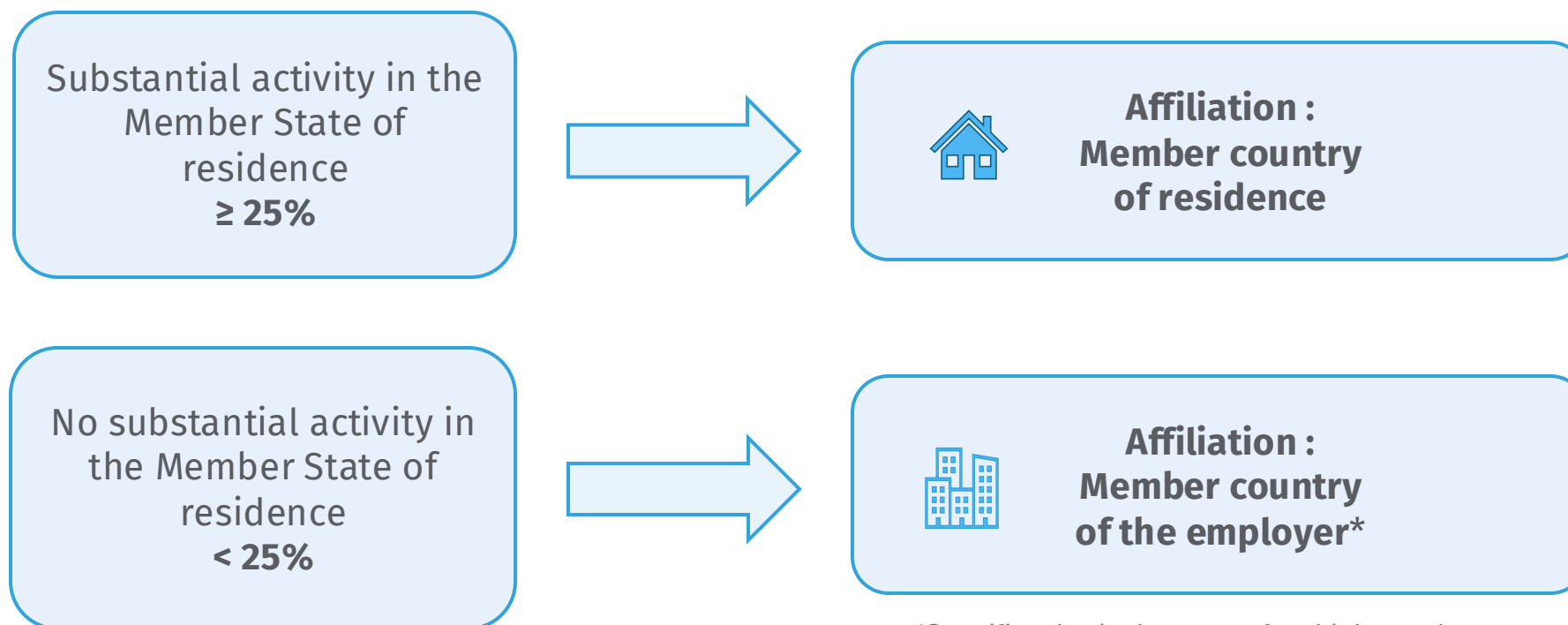
Concept of additional/occasional activity

Calculation of thresholds

Procedure

Principle – Article 13 of the Regulation (No. 883/2004)

Activity carried out in two or more Member States



**Specific rules in the event of multiple employers*

Principle – Article 13 of the Regulation (No. 883/2004)

Notion of "25% of working time"



Actual annual working time of the employee

A day started counts as a whole day

If the threshold is exceeded during the year, a retroactive change of affiliation may be made

A change of employer during the year:
all working days in the country of residence are considered

Derogation – Article 16 of the Regulation (No. 883/2004)

Article 16 of the Regulation (No. 883/2004):

'Two or more Member States may, by common agreement, provide for derogations from Articles 11 to 15 in the interest of certain persons or categories of persons'.

**Framework Agreement on
Teleworking**



Derogation from Article 13 of the Regulation (No.
883/2004)

Scope of the framework agreement

1

Salaried activity

2

Two signatory Member States

3

Teleworking exclusively
in the Member State of residence

4



No other usual activity
apart from that carried out
in the Member State of the
employer

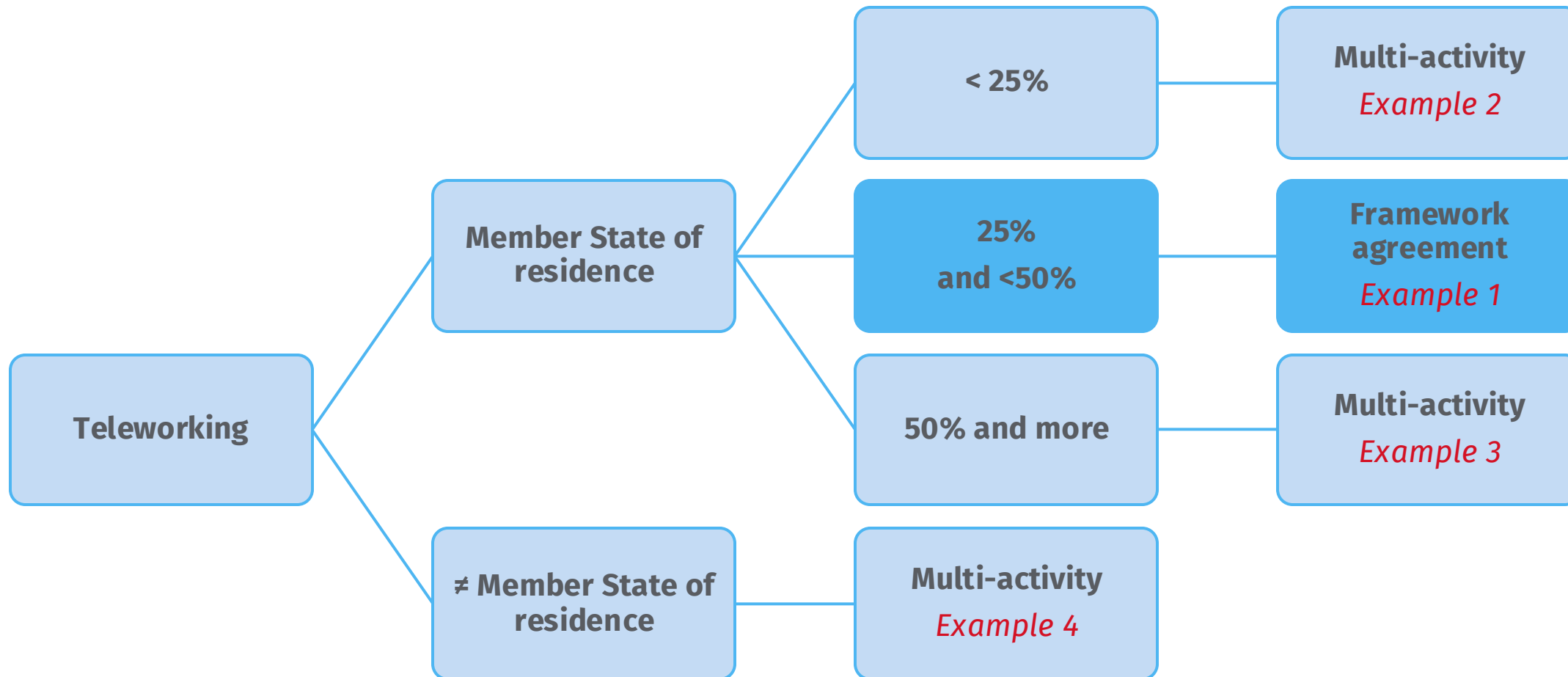
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Teleworking between **25%
and less than 50%** of total
working time

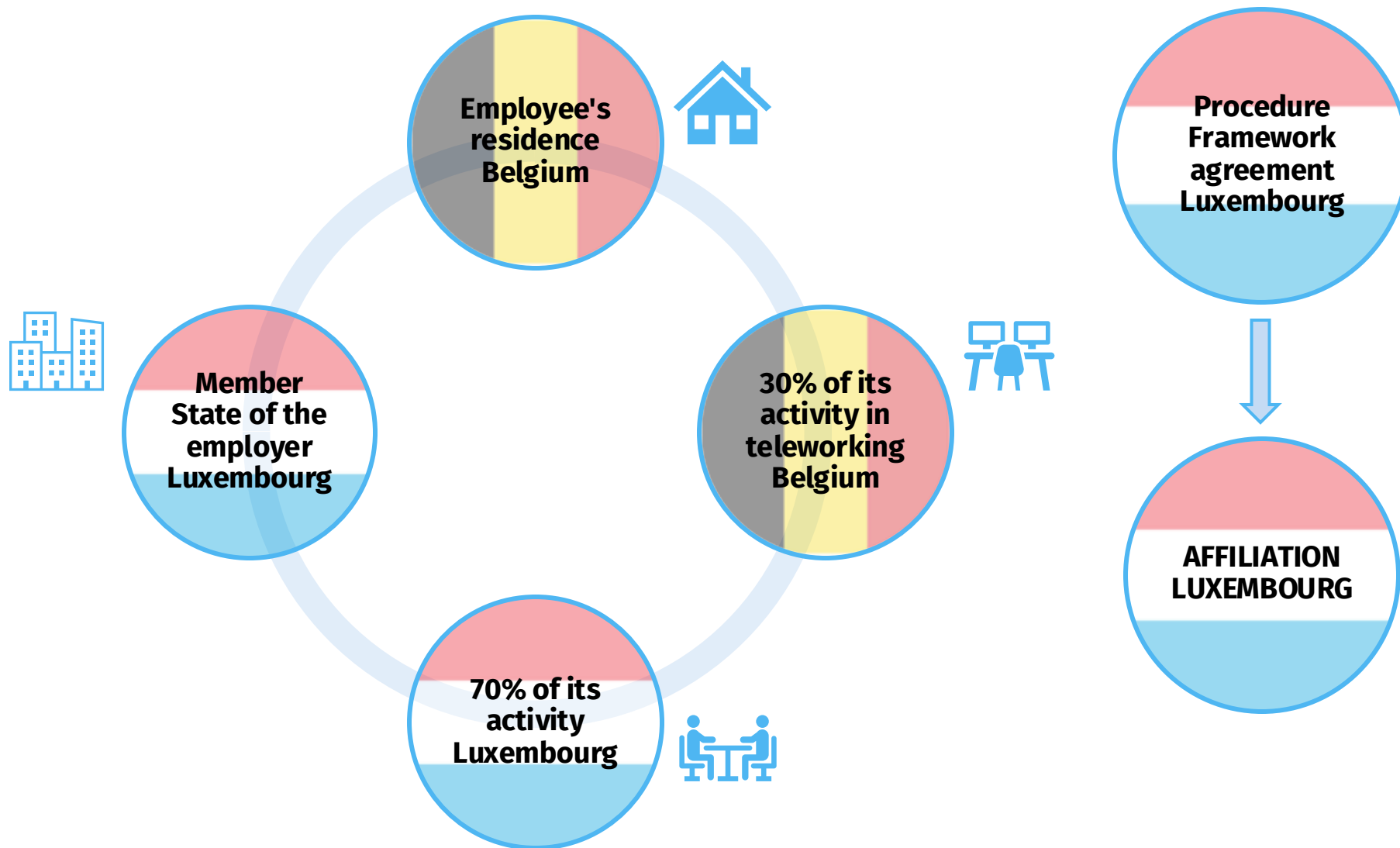
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Connection with the
employer's IT
infrastructure

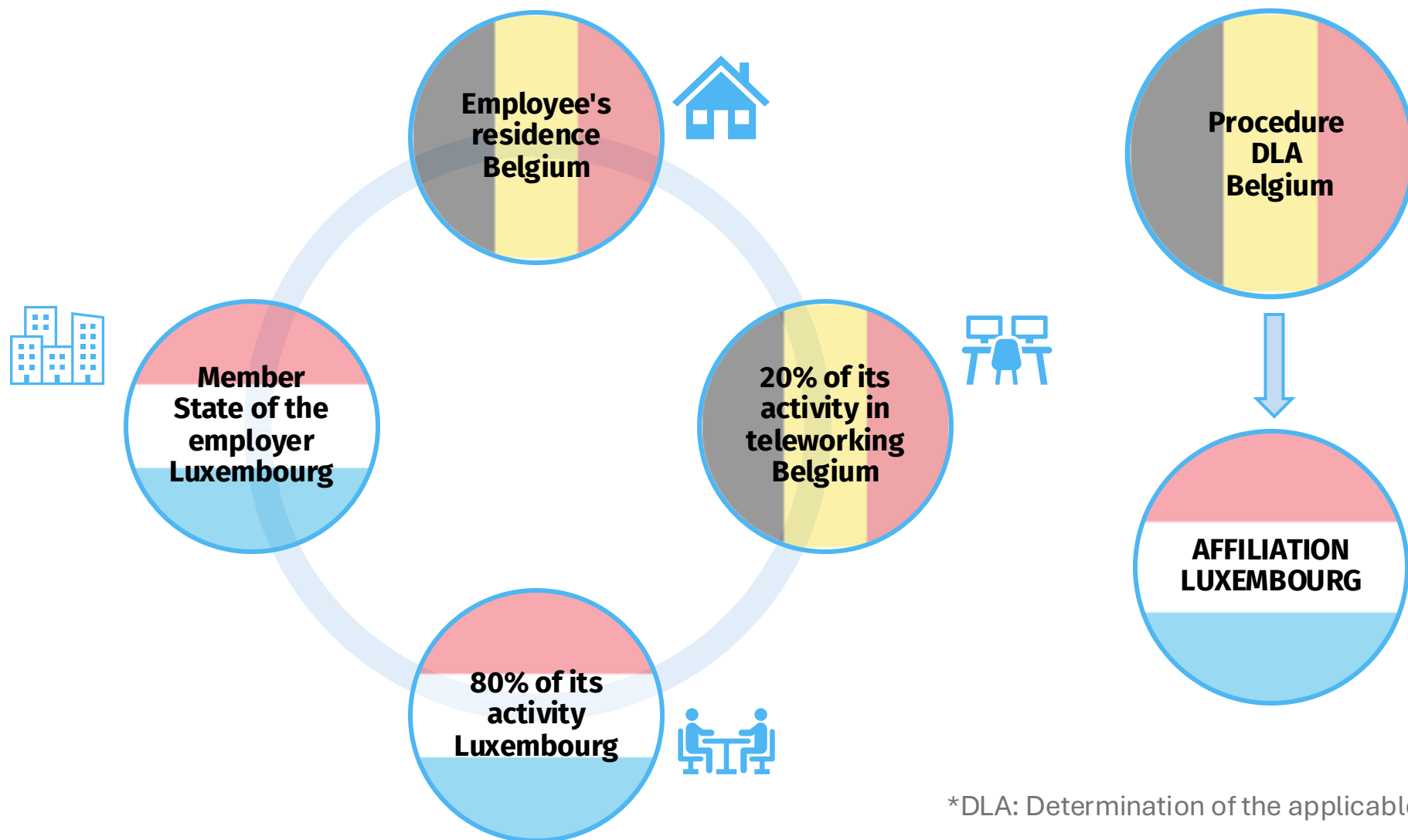
Affiliation in the context of teleworking



Example 1

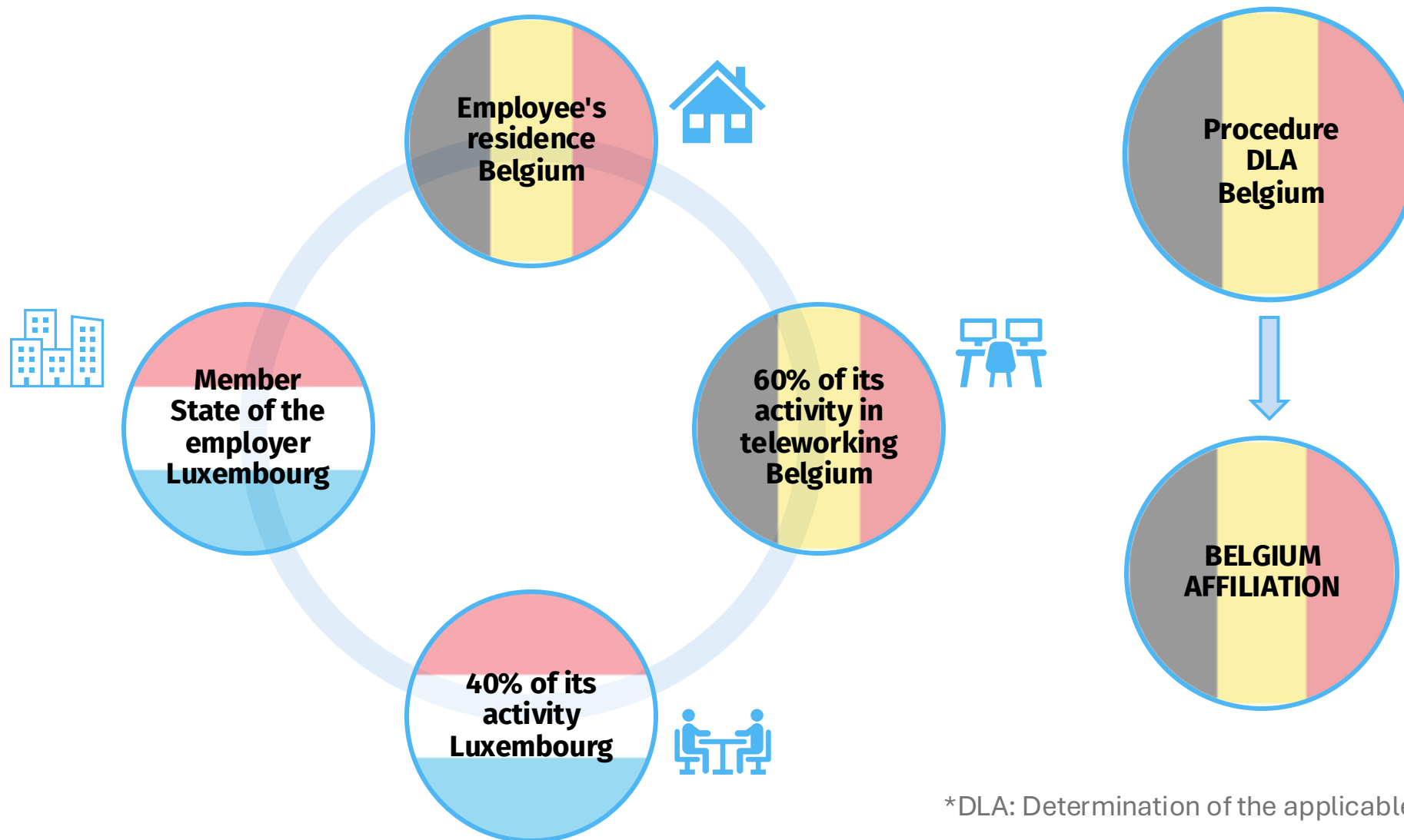


Example 2



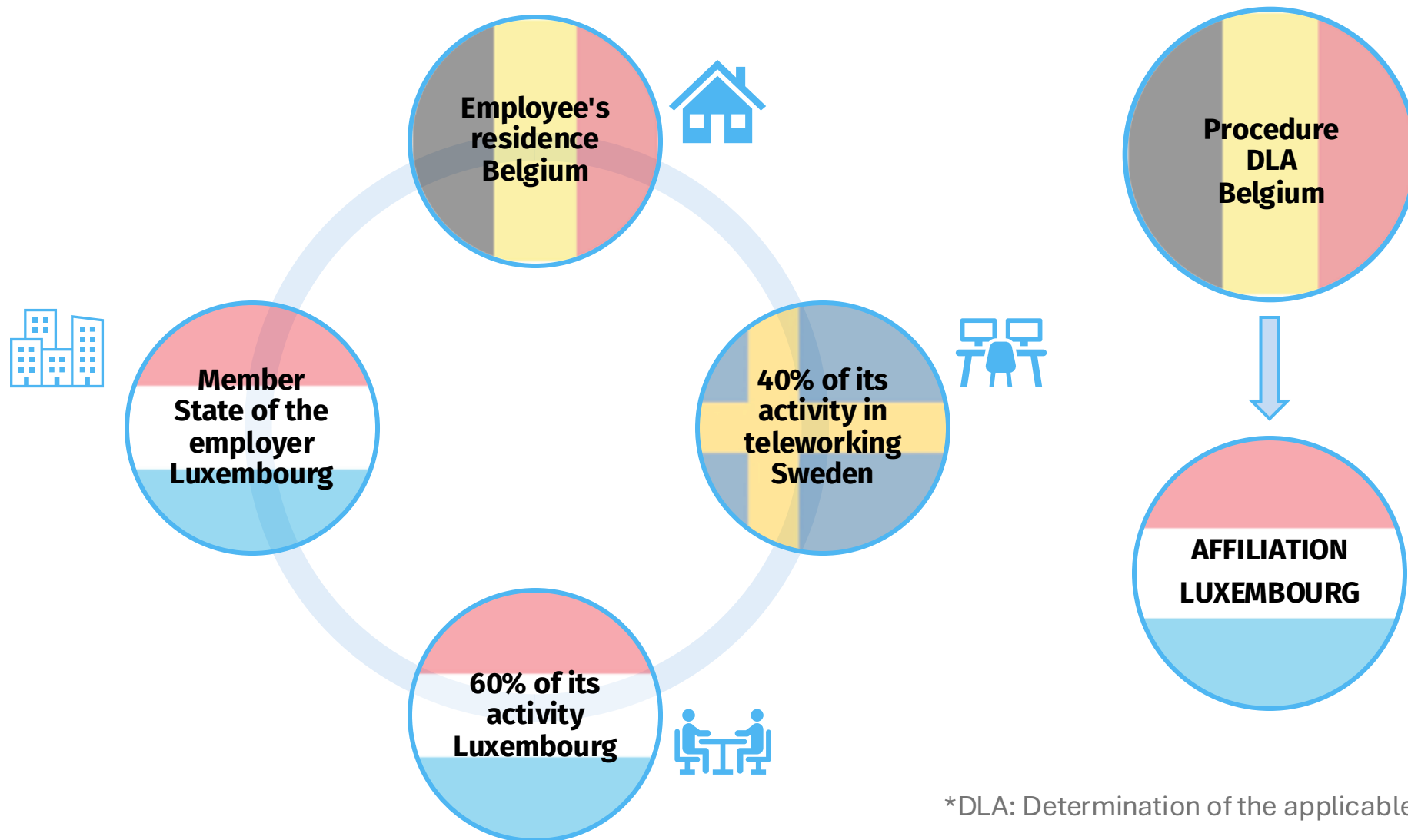
*DLA: Determination of the applicable legislation

Example 3



*DLA: Determination of the applicable legislation

Example 4

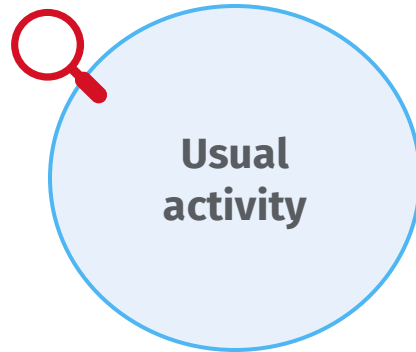


*DLA: Determination of the applicable legislation

Additional activity and implementation of the framework agreement

If the additional activity is usual

The framework agreement **is not applicable**
if the employee usually carries out another activity in another
Member State and Luxembourg



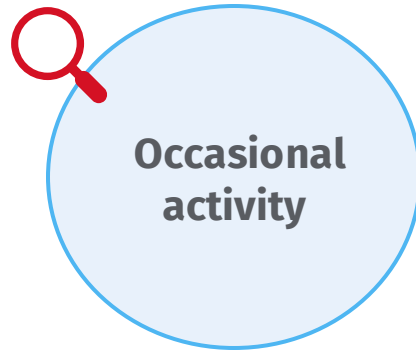
Activity that a person regularly carries out:

- for the employer for whom she also teleworks,
- for another employer, or
- as a self-employed person in a Member State other than that of the employer

Additional activity and implementation of the framework agreement

If the additional activity is occasional

The framework agreement **is applicable**
if the employee **occasionally carries out** another activity in another
Member State and Luxembourg



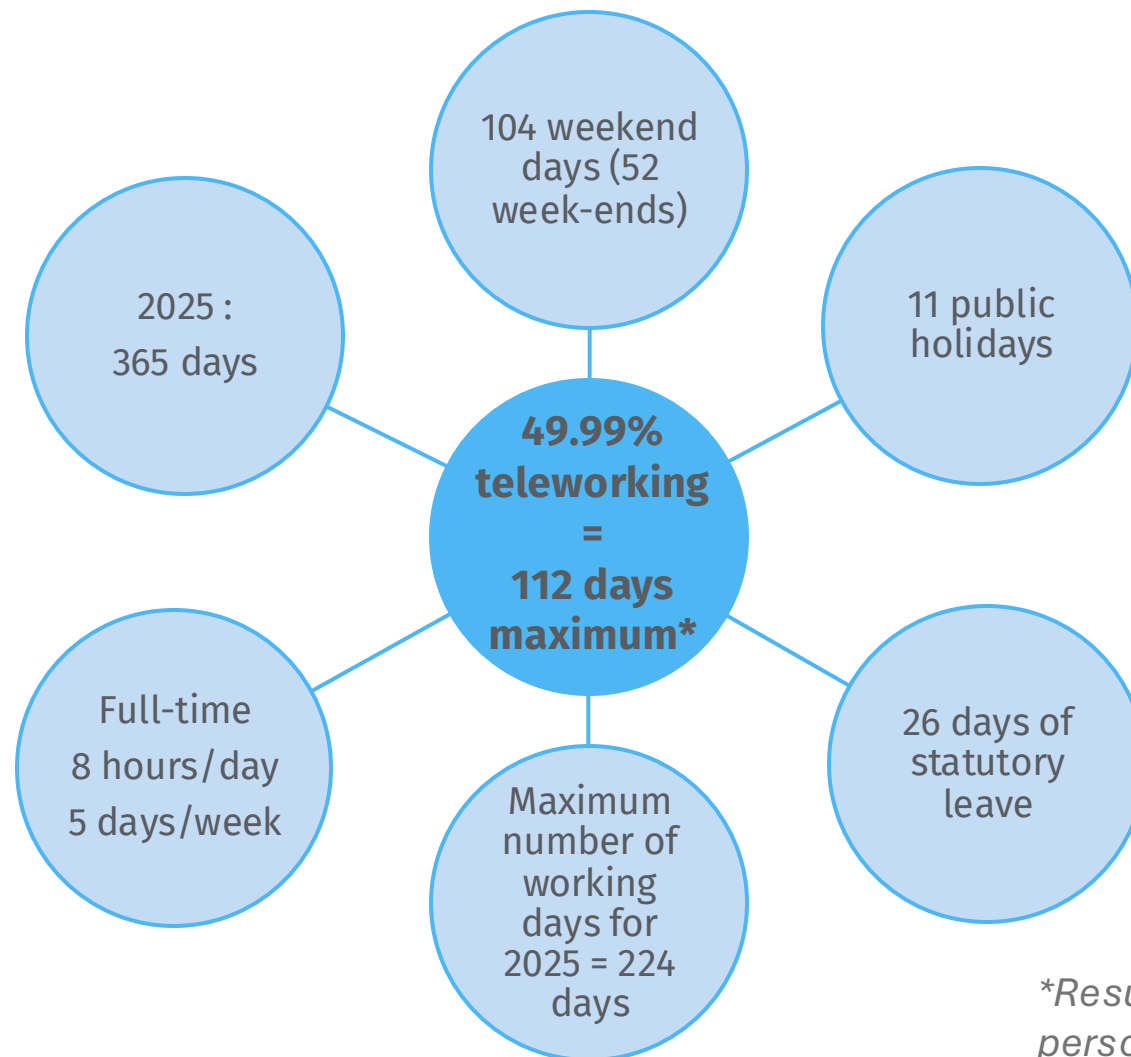
Activity that a person does not usually carry out - one-time activity, temporary assignment

- Participation in a training course,
- Visit to a group's headquarters for a unique event,
- Exceptional meeting with a company to discuss a case (outside the framework of its regular work schedule)

Calculation of thresholds



How to calculate the percentage of teleworking?



**Result may vary depending on the personal situation of each employee*

Procedure - Employer obligations

Practical terms valid since April 2, 2024



The employer must apply: SECUline or paper format



Processing of the file by the CCSS – framework agreement procedure on telework/usual procedure for multi-activity



Issuance of an A1 certificate

<https://ccss.public.lu/fr/employeurs/secteur-prive/activite-etrananger/accord-teletravail.html>

3

The question of the permanent establishment



Principles of the recognition of a permanent establishment

The fact that a Luxembourg company carries out part of its activities in the territory of another country may lead to a submission to **corporate income taxation** in that other country, provided that the conditions for recognising a **taxable presence** in that country («**permanent establishment**») are met.

Thus, the qualification of a permanent establishment as it emerges from double tax treaties can generally be retained due to :

- ✓ **The existence of a fixe place of business, or**
- ✓ **The activity of a dependent permanent agent.**

Based on theses rules, a permanent establishment can therefore be recognized due to the teleworking of cross-border employees of a company, under certain conditions.

Permanent establishment in practice

The current tax rules (based on tax treaties concluded with the neighbouring countries) are general and do not specifically cover the case of cross-border telework.

Therefore, it is necessary to conduct a **case-by-case analysis** taking into consideration various cumulative criteria (as detailed below) and any national specificities:

- ✓ Frequency of telework,
- ✓ Contractual framework in which telework is carried out,
- ✓ Functions and responsibilities of the employee,
- ✓ Extend of activities carried out by the employee at home, and
- ✓ Material organization of work at home.



Clarifications on the applicable rules in this matter (OECD convention model) are expected from the OECD in course of 2025

Focus: The agreement between Belgium and the Netherlands



Belgium and the Netherlands concluded an agreement (published in December 2023*) providing clarifications on the interpretation of the notion of the permanent establishment (existence of a fixe place of business) in the context of cross-border telework of both countries.

Key elements of this agreement

- ✓ **Frequency of telework** : it is accepted that when telework is occasional, it should not lead to the recognition of a permanent establishment. However, when the telework is structural and mandatory, the home workplace can be considered as a permanent establishment.
- ✓ **« Safe-harbour »** : the agreement provides the absence of a permanent establishment in practice, if the occasional telework does not exceed a maximum threshold of 50% of working time (over a period of 12 months).

*Text of the agreement accessible [HERE](https://www.minfin.fgov.be/myminfin-web/pages/public/fisconeT/document/4ff30ed7-5eed-4c9e-87c5-f530ac36cd7a)
<https://www.minfin.fgov.be/myminfin-web/pages/public/fisconeT/document/4ff30ed7-5eed-4c9e-87c5-f530ac36cd7a>
The agreement does not cover the permanent establishment resulting from the presence of a dependent agent.

Example



Maria is an employee residing in France. She holds a position as an administrative assistant in Luxembourg.

Upon her request and for personal convenience, she occasionally works one day a week from home.



Could Maria's telework lead to the recognition of a permanent establishment of her employer in France ?

- ✓ Maria occasionally teleworks on a voluntary basis, for personal reasons,
- ✓ Maria holds an administrative position,
- ✓ The company does not have access to Maria's domicile.

Based on the above elements, the risk of recognising a permanent establishment in France for the company employing Maria seems to be low. However, a deeper analysis of the applicable tax rules in France remains necessary.

What are the consequences for you, employers?

Country A



Country B



**Existence of a
permanent
establishment**

In presence of a permanent establishment of the company in country B, the company :



Will need to comply to the reporting tax obligations in country B



Will be subject to the corporate income tax on the fraction of the profits attributable to the permanent establishment in country B

What precautions should be taken as an employer?

As an employer, you must determine whether the telework of your cross-border employees could lead to the recognition of a permanent establishment and, if so, comply with the reporting and tax obligations in the concerned country.

It is recommended to :

- ☒ Conduct a case-by-case analysis of the telework arrangements of your employees,
- ☒ Track the number of days worked outside Luxembourg by your employees, and
- ☒ Keep any document that can demonstrate the absence of a permanent establishment in case of questions raised from the neighbouring tax authorities.



IFA/WIN Luxembourg organises a tax conference on :

"Cross-border homeworking: navigating the risks of permanent establishments"

5 May 2025 from 9am to 1pm (in-person only)

This event will bring together tax professionals, policymakers, and industry leaders to discuss the challenges linked to managing the permanent establishment risks for companies in the context of cross-border homeworking.

For more information and to register, click [HERE](#)

<https://www.clubee.com/ifaluxembourg/evenements-futurs-87498v4>



Conclusion

Conclusion

The complexity of current rules is a source of legal uncertainty for companies and generates a number of practical questions. An evolution of the cross-border telework tax framework seems necessary.

On this point, initiatives could be undertaken:

- ☒ **At local level**
- ☒ **At the regional level**
- ☒ **At European / international level**

Thank you for your attention !

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your contact within our one of our members.



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